IN THE

Supreme Court of the United States

OCTOBER TERM, 1969

No. 104

UNITED STATES

—v.—

ESTATE OF THOMAS S. DONNELLY, SR., ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

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DOCKET ENTRIES

(United States v. Estate of Thomas S. Donnelly, Sr., et al. No. 104)

UNITED STATE DISTRICT COURT (E.D. Michigan)

Date	Proceedings
12/30/66	Complaint filed—summons issued
5/16/67	Answer, affirmative defenses and counterclaim of defts. Oscar A. Carlson and Genevieve S. Carlson, with exhibit, filed.
5/24/67	Summons filed.
6/ 1/67	Motion of defts. Carlson for summary judgment, filed. Hearing June 12/67.
7/ 3/67	Motion of defts. Carlson for summary judgment heard and taken under advisement. Briefs to be submitted.
7/ 3/67	Proof of service, filed.
9/12/67	Proof of service, filed.
10/ 6/67	Opinion and order for summary judgment in favor of defts. Carlson, filed and entered.
10/ 6/67	Proof of mailing filed.
11/27/67	Govt's notice of appeal, filed.
11/30/67	Proof of mailing, filed.
11/30/67	Letter to Attorney re: appeal, filed.
12/28/67	Stip. and order extending time for docketing appeal to Jan. 22/68, filed and entered.
1/15/68	Transcript of July 3/67, filed.
1/15/68	Letter sending file to CCA, filed.
1/19/68	Acknowledgment filed.
2/14/68	Pre-trial had.
1/14/69	Order (copy) of CCA affirming District Court, filed.

Date	Proceedings
2/14/69	Certified copy of mandate of CCA, filed. File returned.
3/17/69	Default judgment in $36,247.96 plus $38.00 costs, filed and entered. (as to Estate of Thomas S. Donnelly, Sr.)
3/17/69	Affidavits, exhibit and order of default, filed.

UNITED STATES COURT OF APPEALS
(Sixth Circuit)

Date	Proceedings
1/17/68	Certified record (1 Vol. pleadings, exhibit and transcript), filed; and cause docketed
2/ 1/68	Statement of Appellant as to contents of appendix
2/ 5/68	Stipulation: Stipulation Appellant's brief and appendix to 3/17/68 (Approved)
2/ 9/68	Second statement of Appellant as to contents of appendix
3/15/68	Stipulation: Appellants brief and appendix to 3/31/68 (Approved)
3/28/68	Proof of service of brief and appendix for Appellant
4/16/68	Proof of service of brief for Appellees
5/ 2/68	Proof of service of reply brief for Appellant
12/ 9/68	Cause argued and submitted (Before: Celebrezze, Combs and McAllister, JJ.)
1/10/69	Judgment of District Court affirmed on order without opinion (McAllister, J.)
1/27/69	Appellees' verified bill of costs, with proof of service (Approved)
2/12/69	Mandate issued (Costs awarded to Appellees, $204.60 for printing)
4/ 7/69	Copy of letter from Clerk of Supreme Court advising that an extension of time was granted on 4/4/69 by Mr. Justice Stewart for filing petition for certiorari to 5/10/69

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN

Civil Action No. 29428

UNITED STATES OF AMERICA, PLAINTIFF

v.

ESTATE OF THOMAS S. DONNELLY, SR., OSCAR A. CARLSON and GENEVIEVE S. CARLSON, DEFENDANTS

COMPLAINT

Comes now the United States of America, by and through its attorney, Lawrence Gubow, United States Attorney for the Eastern District of Michigan, and for its complaint complains and alleges as follows:

I

This is a civil action by the United States of America wherein it seeks to foreclose its tax liens against certain real property in which the taxpayer, Thomas S. Donnelly, Sr., had an interest at the date of the tax assessments hereinafter set out, and wherein it seeks to obtain a deficiency judgment against the estate of the taxpayer, Thomas S. Donnelly, Sr.

II

This action is commenced pursuant to Sections 7401 and 7403 of the Internal Revenue Code of 1954 at the direction of the Attorney General of the United States, with the authorization and sanction and at the request of the Chief Counsel of the Internal Revenue Service, a delegate of the Secretary of the Treasury.

III

This Court has jurisdiction of this action under Title 28, United States Code, Sections 1340 and 1345 and under Section 7402(a) of the Internal Revenue Code of 1954.

IV

(a) The Estate of Thomas S. Donnelly, Sr., can be served by serving the administrator appointed by the Probate Court for Wayne County, which is within the jurisdiction of this Court.

(b) On information and belief, the defendants, Oscar A. and Genevieve Carlson, are husband and wife who live and reside at 16533 Huntington Road, Detroit, Michigan, which is within the jurisdiction of this Court.

(c) The above defendants have been named in accordance with Section 7403(b) in that they may have and/or claim an interest in the real property hereinafter described.

V

Upon the dates indicated below a delegate of the Secretary of the Treasury made assessments of income taxes, penalties and interest against the taxpayer, Thomas S. Donnelly, Sr., for the years and in the amounts indicated below, gave notice and demand for payment, and filed notices of lien, all as is more fully set forth below:

Period of Tax	Type of Tax	Date of Assessment	Amount of Assessment	Amount Outstanding	Date of Notice & Demand	Date Notice of Tax Lien Filed
1943	Income	8/25/50	$7,551.16 (T) 3,821.90 (P) 2,877.37 (I)	$6,701.27	8/30/50	11/28/50** 11/29/50*** 3/17/61**** 3/20/61*****
1944	Income	8/25/50	5,049.23 (T) 2,524.62 (P) 1,622.39 (I)	1,506.45*	8/30/50	11/28/50** 11/29/50*** 3/16/61**** 3/20/61*****
1945	Income	8/25/50	8,314.10 (T) 2,172.60 (I)	8,144.65	8/30/50	11/28/50** 11/29/50*** 3/17/61**** 3/20/61*****

"T" denotes amount of tax assessed.

"P" denotes amount of penalty assessed.

"I" denotes amount of interest assessed.

* Assessed amount has been paid, but accrued interest in the amount of $1,506.45 remains to be paid.

** Filed with the Register of Deeds, Wayne, County, Detroit Michigan.

*** Filed with the Clerk of the United States District Court for the Eastern District of Michigan, Detroit, Michigan.

**** Filed with the Register of Deeds, Genesee County, Flint, Michigan.

***** Filed with the Register of Deeds, Livingston County, Howell, Michigan.

VI

On June 23, 1950, the Tax Court of the United States, pursuant to a stipulated settlement, entered a decision determining that the taxpayer, Thomas S. Donnelly, Sr., was liable for income taxes and penalties in the amount of $11,373.06 for the year 1943, in the amount of $7,573.85 for the year of 1944, and in the amount of $8,314.10 for the year 1945. The assessments set forth in paragraph V above were based on this decision.

VII

By virtue of two statutory waivers executed by the taxpayer, Thomas S. Donnelly, Sr., one on February 15, 1956, and the other on April 17, 1961, the statute of limitations on the collection of these liabilities has been extended to December 31, 1966.

VIII

The taxpayers, Thomas S. Donnelly, Sr., had an interest, as of the dates of assessment, in certain real property which is legally described as follows:

> The North half of the Northeast part of the Northeast fractional quarter of Section 5, containing 48.75 acres, more or less. And a piece of land in the Northwest fractional quarter of Section 4 described as follows: Commencing at the Northwest corner of Section 4, running thence South on Section line 43 chains to lands owned by Richard Crosby, thence North 82½° East on said Richard Crosby's line 16.36 chains to land deeded to James Crosby, thence 4° 25′ West on said James Crosby's line 42.43 chains to town line, thence West on town line 15.61 chains to place of beginning, containing in last description 67.6 acres, more or less. All in Township 4 North, Range 5 East, Michigan.

IX

As a result of the federal tax assessment set forth in paragraph V above, there arose a tax lien in favor of the

United States of America as of the dates of the assessments, which lien attached to all property and rights to property belonging to the taxpayer, Thomas S. Donnelly, Sr., including the real property described in paragraph VIII above.

X

Although the taxpayer, Thomas S. Donnelly, Sr., has made some payments on the assessments set out in paragraph V above, there remains due and owing on said assessments the sum of $16,352.37, plus interest according to law.

WHEREFORE, the United States of America, plaintiff herein, prays as follows:

1. That this Court adjudge and decree that the estate of the taxpayer, Thomas S. Donnelly, Sr., is liable and indebted to the plaintiff, United States of America, for unpaid taxes, penalties and interest assessed against the said Thomas S. Donnelly, Sr. in the amount of $16,352.37, plus interest according to law.
2. That this Court adjudge and decree that the plaintiff, United States of America, has valid and subsisting liens on all property and rights to property of the taxpayer, Thomas S. Donnelly, Sr.
3. That this Court order the defendants named in paragraph IV of this complaint to appear and assert their respective interest, if any, in the aforedescribed real estate, and that this Court determine the validity of all liens and claims of the parties thereto and the priorities of the respective liens or claims.
4. That this Court order that the liens of the plaintiff in the amount of $16,352.37, plus interest as provided by law, be foreclosed against the real estate described in paragraph VIII of this complaint and order the same sold according to law and the proceeds therefrom paid over to the United States of America to the extent necessary to satisfy its tax liens.

5. That the plaintiff, United States of America, have its costs and such other and further relief as may seem just and proper in the premises.

/s/ Lawrence Gubow
LAWRENCE GUBOW
United States Attorney

By:/s/ Milton J. Trumbauer, Jr.
MILTON J. TRUMBAUER, JR.
Assistant United States Attorney

Dec. 30, 1966

Civil Action No. 29428

Pursuant to local court rule number 8, to my knowledge there are no pending, or heretofore dismissed civil actions arising out of the same transaction of occurrence alleged in this complaint.

/s/ Milton J. Trumbauer, Jr.
Attorney for Plaintiff

[Title Omitted in Printing]

ANSWER, AFFIRMATIVE DEFENSES and COUNTERCLAIM OF DEFENDANTS, OSCAR A. CARLSON and GENEVIEVE S. CARLSON.

To the Honorable FRED W. KAESS, District Judge:

ANSWER

Defendants OSCAR A. CARLSON and GENEVIEVE S. CARLSON through PEVOS & PEVOS, their attorneys, answer the Complaint as follows:

I.

Said defendants neither admit nor deny paragraph I for lack of knowledge as to the intentions of the plaintiff and they leave plaintiff to its proof;

II.

Said defendants neither admit nor deny paragraph II for lack of specific knowledge of the facts therein alleged and they leave plaintiff to prove its proper compliance with Sections 7401 and 7403 of the Internal Revenue Code of 1954;

III.

Defendants deny paragraph III for the reasons set forth in the Affirmative Defenses hereinafter set forth;

IV.

Answering paragraph IV(a) said defendants deny same for the reason that at the time the Complaint was signed and filed on behalf of plaintiff, plaintiff was fully aware that no administrator had been appointed by the Wayne County Probate Court for the ESTATE OF THOMAS S. DONNELLY, SR., who died intestate on January 13, 1963, although plaintiff would have been a proper party under the Michigan Probate Code to procure such appointment from and after February 13, 1963;

Answering paragraph IV(b) defendants admit that they are husband and wife and that they formerly resided

at 16533 Huntington Road, Detroit, Michigan, within the jurisdiction of this Court, but defendants aver that since 1964 they have resided at 10495 Lovejoy Road, Linden, Michigan, on the property described in paragraph VIII of the Complaint;

Said defendants admit paragraph IV(c);

V.

Said defendants neither admit nor deny paragraph V for lack of specific knowledge of all of the facts therein alleged and they leave plaintiff to its proof;

VI.

Said defendants neither admit nor deny paragraph VI for lack of specific knowledge of all of the facts therein alleged and they leave plaintiff to its proofs;

VII.

Said defendants neither admit nor deny paragraph VII for lack of specific knowledge of all of the facts therein alleged and they leave plaintiff to its proofs;

VIII.

Answering paragraph VIII, said defendants admit on information and belief that on or about April 16, 1949 one THOMAS S. DONNELLY and JESSIE C. DONNELLY, his wife, as tenants by the entireties, acquired real property in the Township of Deerfield, Livingston County, Michigan, described substantially the same as the legal description set forth in paragraph VIII, but said defendants deny that the taxpayer, THOMAS S. DONNELLY, SR., had any seizable interest in said property as of the dates of the assessments;

IX.

Said defendants deny paragraph IX;

X.

Said defendants neither admit nor deny paragraph X for lack of knowledge of the facts therein alleged and leave plaintiff to its proofs.

AFFIRMATIVE DEFENSES

A.—*Statute of Limitations*

Defendants CARLSON aver:

1. That for the reasons hereinafter set forth, the statute of limitations on collection of the alleged liabilities of THOMAS S. DONNELLY, SR. through foreclosure of tax liens against the property which was purchased by defendants CARLSON in 1960 took effect in 1961, and said statute of limitations was not extended as against said property by the taxpayer's alleged execution of a statutory waiver on April 17, 1961;

2. In the alternative, that the extension of the statute of limitations on collection of the taxpayer's liability through the statutory waiver allegedly executed April 17, 1961 terminated on December 31, 1966, and the right of plaintiff to foreclose its tax liens against property owned by defendants CARLSON since 1960 also terminated on December 31, 1966, irrespective of the filing of the Complaint herein;

3. In the alternative, that the filing of the Complaint herein did not toll the statute of limitations which took effect December 31, 1966 for the reason that plaintiff failed and neglected to have the Summons and Complaint promptly delivered to the United States Marshal for service upon defendants CARLSON and, upon eventual delivery of said process to the Marshal, plaintiff failed and neglected to have same served upon defendants CARLSON within a reasonable time. Service was not attempted on said defendants until May 4, 1967, although they were continuously within the jurisdiction of this Court from and after December 30, 1966.

B.—*Plaintiff's Failure to Prosecute This Action*

Defendants CARLSON aver that they are entitled to have this action dismissed for failure of plaintiff to prosecute same with diligence. Said defendants aver that plaintiff failed to have the Summons and Complaint promptly delivered to the United States Marshal for service on said defendants or to have same served within a reasonable time after the commencement of this action on December 30, 1966, despite the continued presence of said defendants within this jurisdiction from and after said date.

C.—*Laches*

Defendants CARLSON aver that plaintiff's action for foreclosure, being equitable in nature, is barred by reason of laches for the reason that although the interest of the taxpayer, THOMAS S. DONNELLY, SR., in the real property described in paragraph VIII of the Complaint became subject to said taxpayer's liability upon the death of the taxpayer's wife on May 28, 1960, and even though plaintiff apparently subsequently negotiated with said taxpayer for an extension of the period of collection of his taxes from April 17, 1961 to December 31, 1966, plaintiff failed and neglected either to invoke its alleged tax liens or to attempt to foreclose same until December 30, 1966;

Defendants CARLSON further aver that although the taxpayer died January 13, 1963 and plaintiff could have petitioned under the Michigan Probate Code for administration of the taxpayer's intestate estate after thirty days had elapsed, plaintiff took no action with respect to administration of the taxpayer's estate until December 30, 1966, thereby allowing possible assets of the taxpayer's estate which could have satisfied his tax liability to become dissipated, deteriorated and/or lost through passage of time;

Defendants CARLSON further aver, as hereinafter set forth in Affirmative Defense "D", that they as bona fide purchasers in good faith and for value, acquired the real property described in paragraph VIII of the Complaint

from THOMAS S. DONNELLY on August 6, 1960 and paid therefor the sum of $15,250.00. During the some seven years which have elapsed since said defendants purchased said property plaintiff made no attempt to inform said defendants of its alleged lien or to enforce same against said property. In reliance upon the validity of their title, defendants CARLSON have since 1960 expended upwards of $25,000.00 for improvement of said property, including the restoration and repair of the residence located thereon.

D.—*Invalidity of Lien of United States of America as Against Defendants Carlson*

Defendants CARLSON aver that the alleged lien of plaintiff against the property described in paragraph VIII of the Complaint is not valid as against defendants for the reason that defendants are bona fide purchasers without notice within the meaning of Section 6323(a) of the Internal Revenue Code of 1954. In support of this Affirmative Defense defendants CARLSON aver:

1. That defendants CARLSON purchased the property described in paragraph VIII of the Complaint from THOMAS S. DONNELLY, a single man, survivor of himself and JESSIE C. DONNELLY, deceased, on August 6, 1960 for the sum of $15,250.00 cash paid to said seller through J. R. HAYNER, a reputable real estate broker with offices in the City of Brighton, Livingston County, Michigan. A copy of said defendants' Warranty Deed is annexed hereto as Exhibit "A". Said deed was recorded August 8, 1960 in Liber 378, page 68 of Deeds, Livingston County Records;

2. That said purchase was consummated after examination of an abstract of title prepared by the LIVINGSTON COUNTY ABSTRACT OFFICE, Howell, Michigan, and certified to July 11, 1960, which abstract was examined for defendants CARLSON by the law firm of VanWINKLE, VanWINKLE & HEIKKINEN, of Howell, Michigan, who passed upon the marketability of said defendants' title in accordance with a written title opinion dated July 22, 1960;

3. That the LIVINGSTON COUNTY REGISTER OF DEEDS has been designated as the office for the filing of notices of tax lien affecting real property situated within said County under Act 107 of the 1956 Public Acts of the State of Michigan, commonly known as the "Uniform Federal Tax Lien Registration Act" (M.S.A. 7.753(1) et seq.), effective August 11, 1956;

4. That the records of said LIVINGSTON COUNTY REGISTER OF DEEDS indicate that no notices of plaintiff's tax liens against THOMAS S. DONNELLY, SR. were filed with said REGISTER OF DEEDS prior to consummation of defendants' purchase of the real property described in paragraph VIII of the Complaint on August 6, 1960;

5. That as appears from paragraph V of the Complaint, plaintiff did not file statutory notices of its alleged liens against said THOMAS S. DONNELLY, SR. with the office of the LIVINGSTON COUNTY REGISTER OF DEEDS in accordance with said Section 6323 (a) of the Internal Revenue Code of 1964 until on or about March 17, 1961, some seven months after defendants CARLSON purchased said real property. That the aforesaid notices of tax lien filed by the UNITED STATES OF AMERICA on or about March 16, 1961 are clouds upon the title of the real property owned by defendants CARLSON and should be removed;

6. That until served with the Complaint herein, defendants CARLSON were at all times unaware of any tax liens against the property of the said THOMAS S. DONNELLY, SR.;

WHEREFORE, defendants CARLSON pray as follows:

1. That the Complaint be dismissed as to defendants CARLSON and the real property described in paragraph VIII, and that said defendants be awarded costs and attorney fees;

2. That this Court determine that defendants CARLSON are the lawful owners of the real property described in paragraph VIII of the Complaint, free and clear of

any lien or claim of plaintiff, the UNITED STATES OF AMERICA;

3. That defendants CARLSON have such other and further relief as may be just and equitable under the circumstances.

DATED: MAY 16, 1967

PEVOS & PEVOS

By /s/ Daniel N. Pevos
DANIEL N. PEVOS
Attorneys for Defendants,
Oscar A. Carlson and
Genevieve S. Carlson

COUNTERCLAIM FOR JUDGMENT QUIETING TITLE TO REAL PROPERTY

Defendants OSCAR A. CARLSON and GENEVIEVE S. CARLSON through PEVOS & PEVOS, their attorneys, say:

1. That this Counterclaim is brought pursuant to the provisions of Title 28, United States Code, Section 2410, for judgment quieting title to the real property in the Township of Deerfield, Livingston County, State of Michigan, more particularly described in paragraph VIII of the Complaint heretofore filed by plaintiff UNITED STATES OF AMERICA;

2. That upon information and belief, on or about March 16, 1961 a delegate of the Secretary of the Treasury filed certain notices of lien against one THOMAS S. DONNELLY, SR. with the office of the REGISTER OF DEEDS OF LIVINGSTON COUNTY, MICHIGAN, in accordance with Section 6323(a) of the Internal Revenue Code of 1954 and in accordance with Act 107 of the 1956 Public Acts of the State of Michigan, which designated the office of the said Register of Deeds as the proper place for the filing of notices of tax lien affecting property situated within said County of Livingston;

3. Plaintiff has attempted to assert the priority of its alleged tax liens as against the fee simple title of defendants CARLSON who purchased the real property described in paragraph VIII of the Complaint from THOMAS S. DONNELLY, a single man, survivor of himself and JESSIE C. DONNELLY, deceased, on August 6, 1960 for value and without notice of said alleged tax liens. A copy of said defendants' Warranty Deed is annexed hereto as Exhibit "A". Said deed was recorded August 8, 1960 in Liber 378, page 68 of Deeds, Livingston County Records;

4. That despite the mandatory requirements of said Section 6323(a) of the Internal Revenue Code of 1954, until on or about March 16, 1961 plaintiff failed and neglected to file statutory notices of lien with the office of the REGISTER OF DEEDS OF LIVINGSTON COUNTY although, from and after August 11, 1956, said

REGISTER OF DEEDS was designated by Act 107 of the 1956 Public Acts of the State of Michigan (commonly known as the "Uniform Federal Tax Lien Registration Act") as the office within which to file notices of tax liens affecting property situated within said County of Livingston;

5. That the aforesaid notices of tax lien filed by the UNITED STATES OF AMERICA on or about March 16, 1961 are clouds upon the title of defendants CARLSON and should be removed;

WHEREFORE, defendants CARLSON pray as follows:

1. That this Court enter judgment determining that defendants CARLSON are the owners in fee simple of the real property described in paragraph VIII of the Complaint, free and clear of any claim or lien in favor of the UNITED STATES OF AMERICA;

2. That the statute of limitations for enforcement of any assessments against the ESTATE OF THOMAS S. DONNELLY, SR. having elapsed, this Court order plaintiff UNITED STATES OF AMERICA to discharge or cause to be discharged from the records of the LIVINGSTON COUNTY REGISTER OF DEEDS any tax liens filed against THOMAS S. DONNELLY, SR. or his Estate affecting the real property purchased by defendants CARLSON on August 6, 1960;

3. That defendants CARLSON have such other and further relief as shall be just and equitable under the circumstances.

DATED: MAY 16, 1967

PEVOS & PEVOS

By /s/ Daniel N. Pevos
DANIEL N. PEVOS
Attorneys for Defendants,
Oscar A. Carlson and
Genevieve S. Carlson
1041 Penobscot Building
Detroit, Michigan 48226
(tel. 961-7842)

THIS INDENTURE, made this 6th day of August 1960 *Between* THOMAS S. DONNELLY, a single man, survivor of himself and Jessie C. Donnelly, deceased, party of the first part, and[1] Oscar A. Carlson and Genevieve G. Carlson, his wife, 16533 Huntington Road, Detroit 19, Michigan, parties of the second part,

Witnesseth, That the said party of the first part, for and in consideration of the sum of One Dollar ($1.00) and other good and valuable consideration to him in hand paid by the said parties of the second part, the receipt whereof is hereby confessed and acknowledged, does by these presents grant, bargain, sell, remise, release, alien and confirm unto the said parties of the second part, and[2] their heirs and assigns, FOREVER, all that certain piece or parcel of land situate and being in the Township of Deerfield County of Livingston and State of Michigan, and described as follows, to-wit:

> The North half of the Northeast part of the Northeast fractional quarter of Section 5, containing 48.75 acres, more or less, and a part of the Northwest fractional quarter of Section 4, described as follows: Commencing at the Northwest corner of said Section 4; running thence South on Section line 43 chains, to lands owned by Richard Crosby; thence North 82½ deg. East on said Richard Crosby's line 16.36 chains, to land deeded to James Crosby; thence North 4 deg. 25′ West on said James Crosby's line 42.43 chains to town line; thence West on town line 15.61 chains to place of beginning, all being in Town 4 North, Range 5 East, Michigan.
>
> The Death Record of Jessie C. Donnelly is recorded in Liber 377, Page 536 Livingston County Records.

Together with all and singular the hereditaments and appurtenances thereunto belonging or in anywise appertaining: *To Have and to Hold* the said premises, as herein described, with the appurtenances, unto the said parties of the second part and to[2] their heirs and assigns, FOREVER. And the said Thomas S. Donnelly, survivor party of the first part, for himself, his heirs, executors

and administrators, does covenant, grant, bargain and agree to and with the said parties of the second part[2] their heirs and assigns, that at the time of the ensealing and delivery of these presents he is well seized of the above granted premises in fee simple; that they are free from all incumbances whatever and that he will, and his heirs, executors, and administrators shall *Warrant and Defend* the same against all lawful claims whatsoever,

In Witness Whereof, The said party of the first part has hereunto set his hand and seal the day and year first above written.

/s/ Thomas S. Donnelly
THOMAS S. DONNELLY

Signed, and Delivered in Presence of

/s/ Edna D. Wynn
EDNA D. WYNN

/s/ James R. Hayner
JAMES R. HAYNER

STATE OF MICHIGAN)
) ss.
COUNTY OF LIVINGSTON)

On this 6th day of August 1960 before me, a Notary Public, in and for said County, personally appeared Thomas S. Donnelly, a single man, survivor of himself and Jessie C. Donnelly, deceased, to me known to be the same person described in and who executed the within instrument, who has acknowledged the same to be his free act and deed.

/s/ James R. Hayner
JAMES R. HAYNER
Notary Public
Livingston County, Michigan

My commission expires 6/11/63

WARRANTY DEED

(PHOTO-STAT)—SHORT FORM

THOMAS S. DONNELLY, a single man,

TO

OSCAR A. CARLSON AND WIFE

REGISTER'S OFFICE,)
) ss.
COUNTY OF LIVINGSTON)

This instrument was presented and received for record this 8th, day of August A.D. 1960 at 9:30 o'clock A.M., and recorded in Liber 378 of Deeds, page 68, as a proper certificate was furnished in compliance with Section 3531, Compiled Laws of 1929, as amended by Act 261, P. A. of 1931.

/s/ William L. Haack
Register of Deeds.

J. R. Hayner Agency
Brighton.

[Title Omitted in Printing]

NOTICE OF HEARING

TO: LAWRENCE GUBOW,
United States Attorney

Attention:

MILTON J. TRUMBAUR, JR.,
Assistant United States Attorney,
870 Federal Building,
Detroit, Michigan 48226

and

EMMET E. TRACY, JR.
Administrator of the Estate of
Thomas S. Donnelly, Sr.
2555 Guardian Building,
Detroit, Michigan 48226

YOU WILL PLEASE TAKE NOTICE that the annexed MOTION BY DEFENDANTS CARLSON FOR SUMMARY JUDGMENT will be heard by the HONORABLE FRED W. KAESS, DISTRICT JUDGE, in his courtroom, 8th floor Federal Building, Detroit, Michigan, on MONDAY, the 12th day of JUNE, 1967 at 9:30 A.M., or as soon thereafter as counsel may be heard.

Dated: June 1, 1967.

PEVOS & PEVOS

By /s/ Daniel N. Pevos
DANIEL N. PEVOS

Attorneys for Defendants,
Oscar A. Carlson and
Genevieve G. Carlson

1041 Penobscot Building
Detroit, Michigan 48226

(tel. 961-7842)

[Title Omitted in Printing]

MOTION BY DEFENDANTS CARLSON FOR SUMMARY JUDGMENT

TO THE HONORABLE FRED W. KAESS, DISTRICT JUDGE:

Defendants OSCAR A. CARLSON and GENEVIEVE G. CARLSON through PEVOS & PEVOS, their Attorneys, respectfully move for summary judgment dismissing the Complaint as to said defendants and granting the relief sought by said defendants in their Counterclaim For Judgment Quieting Title To Real Property. In support of their Motion said defendants say:

1. Plaintiff's action for foreclosure, being equitable in nature, is barred by reason of laches for the reasons more particularly set forth in Affirmative Defense "C". There being no genuine issue of fact as to the matters set forth in said Affirmative Defense "C", defendants CARLSON are entitled to judgment dismissing the Complaint as to their real property as a matter of law;

2. That as more specifically stated in Affirmative Defense "D", and in the Counterclaim for Judgment Quieting Title To Real Property, the lien of plaintiff UNITED STATES OF AMERICA is invalid as against the real property described in paragraph VIII of the Complaint and as against defendants CARLSON. For the purpose of this Motion, defendants CARLSON assume that the filing data set forth by plaintiff in paragraph V of the Complaint is correct and that statutory notices of plaintiff's tax lien were filed in the places and on the dates therein set forth. Defendants CARLSON aver that the Warranty Deed dated August 6, 1960 annexed to their Answer as Exhibit "A" is a matter of public record, said Deed having been recorded with the Office of the REGISTER OF DEEDS OF LIVINGSTON COUNTY, MICHIGAN, on August 8, 1960 in Liber 378 of Deeds, Page 68, Livingston County Records. Defendants CARLSON further aver that the $15,250.00 which they paid for said real property as innocent purchasers thereof is sup-

ported by the $17.75 in revenue stamps which appear on said Warrently Deed and by the purchase agreement, closing statement, and cancelled checks in their possession. Defendants CARLSON further aver that although they can also establish as a matter of fact their subsequent expenditure of upwards of $25,000.00 for improvement of said real property, proof of said expenditures is not essential to the determination of this Motion for Summary Judgment;

3. Defendants CARLSON contend that, as a matter of law, in order to make its tax lien against real property in Livingston County, Michigan, valid as against innocent purchasers, plaintiff was required under Section 6323(a) of the Internal Revenue Code of 1954 to file notice of such lien with the Livingston County Register of Deeds. As appears from the Complaint, plaintiff UNITED STATES OF AMERICA neglected to file a statutory notice of lien with the LIVINGSTON COUNTY REGISTER OF DEEDS until on or about March 17, 1961, some seven (7) months after defendants CARLSON purchased said real property;

4. Since, as a matter of law, defendants CARLSON were purchasers in fee simple of the real property described in paragraph VIII of the Complaint protected under said Section 6323(a) of the Internal Revenue Code of 1954, plaintiff UNITED STATES OF AMERICA has no valid lien or interest whatsoever in said real property;

WHEREFORE, defendants CARLSON pray that this Court enter Summary Judgment dismissing the Complaint as to the real property described in paragraph VIII of the Complaint and as to defendants CARLSON, and determining that defendants CARLSON are the owners in fee simple of said real property free and clear of any claim or lien in favor of the UNITED STATES OF AMERICA. Defendants CARLSON further pray that this Court order plaintiff UNITED STATES OF AMERICA to discharge or cause to be discharged from the records of the LIVINGSTON COUNTY REGISTER OF DEEDS any tax liens filed against THOMAS S.

DONNELLY, SR. or his Estate affecting the real property described in paragraph VIII of the Complaint.

This Motion is based upon the files and records of this Court in this cause, the records of the Livingston County Register of Deeds, and the file of the Wayne County Probate Court in the Matter of the Estate of Thomas S. Donnelly, Sr., deceased, File No. 564-956.

Dated: June 1, 1967.

PEVOS & PEVOS

By /s/ Daniel N. Pevos
DANIEL N. PEVOS

Attorneys for Defendants,
Oscar A. Carlson and
Genevieve G. Carlson

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(tel. 961-7842)

[Title Omitted in Printing]

Proceedings had in the above-entitled matter before the Honorable Fred W. Kaess, District Judge, at Detroit, Michigan, on Monday, July 3, 1967, in the forenoon.

APPEARANCES:

JOSEPH F. DEEB, Esq.,
Assistant United States Attorney,
833 Federal Building,
Detroit, Michigan 48226,

Appearing on behalf of the government.

MESSRS. PEVOS AND PEVOS,
1041 Penobscot Building,
Detroit, Michigan 48226,
(By Daniel N. Pevos, Esq.),

Appearing on behalf of the defendants.

ROBERT G. CONLEY—OFFICIAL COURT REPORTER

[fol. 2]

Detroit, Michigan,
Monday, July 3, 1967,
In the forenoon.

THE COURT: Now we go to the matter of The U. S. v. Carlson.

MR. PEVOS: Daniel Pevos—

THE COURT: For the government?

MR. PEVOS: No, sir. I am appearing for the Defendant Carlson.

THE COURT: Who is for the government?

MR. DEEB: I am, your Honor.

THE COURT: Mr. Deeb. All right.

MR. PEVOS: May it please the Court, this motion was served also on the estate of Thomas S. Donnelly, Sr.,

in the person of Emmett Tracey, who was appointed administrator. Proof of service has been filed, but Mr. Tracey indicated that the subject matter of this motion doesn't directly affect him and he was not going to appear, and I do not see him here this morning.

Your Honor, would you want me to recite the facts which I think are important in connection with the argument—but perhaps your Honor has already had the opportunity—

[fol. 3] THE COURT: I have briefed myself on it, but I would prefer you to go ahead because I might not have all the facts.

MR. PEVOS: I feel that it is almost apropos that this matter is coming on on the day before the 191st anniversary of the Declaration of Independence. The reasons for such declaration I think being known to all schoolboys and schoolgirls, and I hate to say that I feel my clients, had the British been involved, would have had good cause to have the Boston Tea Party over this matter.

THE COURT: There is no jury here, or anything. Go ahead.

MR. PEVOS: Your Honor, the Defendants Carlson claim that they are the innocent purchasers of the property that is described in Paragraph 8 of the complaint, and with respect to that property as a matter of public record, and we have conceded various allegations in the complaint filed by The United States to be true for the purpose of our motion—

THE COURT: Which you would have to do.

MR. PEVOS: Yes, sir. We have conceded that certain of these facts, as I have pointed out as I go along, are true.

[fol. 4] In April of 1949, Thomas Donnelly and his wife acquired the property which is described in the complaint as tenants by the entireties, and this deed is recorded in Livingston County and is, as I say, a matter of public record.

Apparently Mr. Donnelly, who I understand was a member of the bar until his death about four years ago, had certain tax problems with the Internal Revenue Service as a result of which in June of 1950 because of a set-

tlement worked out in the tax court substantial tax liabilities were assessed, income tax liabilities were assessed against Mr. Donnelly as an individual, not in the case of Mr. Donnelly and his wife, as an individual liability. These taxes apparently, according to the complaint, exceeded $26,000.00.

THE COURT: That assessment was August 25th, as set out in the complaint?

MR. PEVOS: The assessment was June of 1950, your Honor—

MR. DEEB: Yes.

MR. PEVOS: —$26,000.00. This was taxes for 1943, '44 and '45, as alleged.

THE COURT: All right.

MR. PEVOS: It is my understanding that the unpaid [fol. 5] balance of these assessments at the present time is in the neighborhood of $31,000.00; is that correct, Mr. Deeb? There is nothing in the complaint to indicate the present sum.

MR. DEEB: The interest and so forth—I don't really know the exact amount right now.

MR. PEVOS: But it is in the neighborhood of $30,000.00.

On November 28, 1950 the Internal Revenue Service caused to be filed with the Wayne County Registrar of Deeds a statutory notice of tax lien. Now, on the next day, November 29, 1950, the Internal Revenue Service also caused to be filed with the Clerk of this Court a statutory notice of tax lien; and the matter stood.

I want to emphasize that the property involved here is in Livingston County, Michigan. There was nothing filed by the Internal Revenue Service in Livingston County, Michigan at the times involved, up to this particular point.

Now, sometime in early 1956 the taxpayer, Mr. Donnelly, according to the complaint, executed a statutory waiver extending the time for collection of his tax liabilities for a period of approximately five years. The exact period I cannot tell from the complaint, but I assume [fol. 6] that period expired in 1961; whereas, the original liability under the law would have expired in 1956.

THE COURT: My notes show that the waiver executed by Donnelly extended the statute to December 31, 1966; am I incorrect?

MR. PEVOS: That was the second waiver, your Honor.

THE COURT: All right.

MR. PEVOS: Now, on August 11, 1956 the State of Michigan passed, and it became effective on that date, what they call the "Uniform Federal Tax Lien Registration Act," which is cited here as M.S.A. 7.753(1) et seq.

Now, prior to August 11, 1956, and for a period of some 33 years, from 1923, the State of Michigan had a Tax Lien Registration Act which in 1956, when the Uniform Act became effective in Michigan, was valid as far as anybody here in the State of Michigan knew, because that Act had been construed by the District Court of the Western District in 1939 in the case of United States v. Maniaci, which is in 36 F. Supp. 293; and the Act has also been upheld by the Circuit Court of Appeals for the Sixth Circuit in the case of Youngblood v. The United States, which is in 141 F.2d 912. This case was decided in 1944.

[fol. 7] Now this is important in this regard to this matter, I believe, because in 1950 the precedent as high as the Court of Appeals for the Sixth Circuit was that the Michigan Statute in effect from 1923 to 1956 was valid, the Youngblood case never having been reversed or affirmed by the Supreme Court of The United States.

But Michigan, in order to align itself with approximately 35 other states, did, as I say, in 1956 adopt the Uniform Act.

Now, all during this period of time the property involved in this matter was owned by the taxpayer, Mr. Donnelly and his wife as tenants by the entirety; and only in May of 1960, when Mrs. Donnelly, the wife, died did the tax lien attach to this property, and I refer to the cases which I cite in my brief in support of the position that a tax lien against a husband or wife individually does not attach to property owned by the entireties, and I do not argue the point, as my opponent Mr. Deeb has raised in his brief, that upon the death of one of those spouses that the lien attaches to the property formerly held by the

entireties; and I think the Glass City Bank case of The United States Supreme Court handed down in 1945 resolved that matter. He cites that in his brief. I don't argue that point. I indicate on Page 5 of my brief that [fol. 8] that is the law.

About six weeks after Mrs. Donnelly died in 1960 Mr. and Mrs. Carlson, through a broker in Brighton, Michigan, having previously negotiated with Mr. and Mrs. Donnelly, I believe, dying suddenly in May of 1960, submitted an offer for the purchase of this property from Mr. Donnelly. The offer was consummated in August of 1960 by the payment of cash in the sum of $15,250.00, the fair market value of the property.

The Carlsons, I don't think there is any question, did not know Mr. Donnelly before. This was an arm's length transaction between strangers. They had no notice of the tax problems of Mr. Donnelly.

THE COURT: That is not alleged, anyway.

MR. PEVOS: Well, I have alleged that, your Honor.

THE COURT: I mean the government. We have to look at this in the light most favorable to the government.

MR. PEVOS: But they have not contested that allegation of fact.

THE COURT: They have not alleged it, anyway, that it wasn't anything else but an arm's length transaction. [fol. 9] MR. PEVOS: That's right, they have not contested that particular argument in regard to this matter, and we are proceeding on the assumption that this is true.

THE COURT: Yes.

MR. PEVOS: In March of 1961, which was some 10 months after Mrs. Donnelly died, and some seven or eight months after the Carlsons had bought the property, the Internal Revenue Service apparently, and I can only surmise this, and I don't think it is important in regard to the decision on this motion, but it may be of some value in determining the reasons here, the Internal Revenue Servive cause to be filed with the Registrar of Deeds in Livingston County, Michigan, a notice of tax lien.

Now, as I pointed out later on, in 1961 there was no change in the state law, no change in the federal law which would have necessitated a filing of a tax lien in

Livingston County if they had not had the obligation to file such a notice either under the 1956 Act, which I claim they did, or because of the fact that the lien attached in 1960 to the property when Mrs. Donnelly passed away, there being no previous notice of lien on file in that particular county; however, this, as I say, was months after the Carlsons had bought the property.

[fol. 10] The Carlsons bought the property by virtue of an abstract which was prepared by the Livingston Abstract Office which indicated that on file with the Registrar of Deeds there was no record of any tax liens. This was, apparently, the standard abstract certification of the abstract companies at that particular time. As I indicated, the law in the State of Michigan having been on the books almost 40 years at that time indicating that tax liens had to be filed with the Registrar of Deeds in order to effect real property located within the county. The abstract was examined by a firm of attorneys in Howell, Michigan, who I know represent the banks there. They are familiar with real estate matters; they passed on the validity of the title based on the abstract.

THE COURT: Didn't the abstract except—

MR. PEVOS: The abstract had a printed clause in there, your Honor, on the back of it indicating that the abstract did not cover any matters on file with Circuit Court, Probate Courts or the Federal District Courts. This was a printed exception in there, but I want to emphasize again that everybody believed the law to be at that time, being on the books for many years, that the tax liens were to be filed with the Registrar of Deeds Office.

[fol. 11] THE COURT: I was just clearing up a point in my mind.

MR. PEVOS: Yes.

THE COURT: In other words, there would be no action against the abstract company?

MR. PEVOS: No, sir, there is no action against the abstract company because they excepted any such situation.

In September of 1961, almost a year and a half after the Carlsons had purchased this property, The United States Supreme Court in the case of The United States v.

Union Central Life Insurance Company determined that the recording law for tax liens which had been in the books in Michigan between 1923 and 1956 was invalid because in that case the Oakland County Registrar of Deeds Office involved in a situation which all transpired prior to the 1956 Uniform Act which was adopted in Michigan, that it was stipulated in that case that the Oakland County Registrar of Deeds would not accept a notice of tax lien for filing without a legal description contained in the notice, as was required by the Michigan statute. The requirement of a legal description having been upheld by the Court of Appeals from the Sixth Circuit in the Youngblood case and Maniaci case back in 1939, but the Supreme Court chose to [fol. 12] determine that because of this requirement that the law on the books in Michigan for some 33 years was invalid and that the alternate procedure under the Internal Revenue Code of filing with the Clerk of the District Court where the Clerk did not designate a local office for the recording of tax liens affected the State of Michigan for the period from 1923 to 1956 because, according to the Supreme Court, Michigan did not have a valid law designating a local office, which is step one of the section in the Internal Revenue Code, Section 6323; and therefore, step two, which is filing with the Clerk of the District Court, was applicable; and therefore, that type of filing was valid, and I do not argue that because of the Union Central case that the filing with a certain amount of clairvoyance, as far as I can see in this matter, by the Internal Revenue Service in 1950 with the District Court at the same time they filed with the Wayne County Registrar of Deeds because Mr. Donnelly lived in Wayne County, that the filing with the Clerk of the Court was valid because of the Union Central case as respects the affairs of Mr. Donnelly.

However, it is our position, number one: That the filing in 1950 only affected property owned by the taxpayer, Mr. Donnelly, which was subject to the tax lien at the time of filing or after acquired property. I don't argue that point [fol. 13] either, as the Glass City Bank case cited by my colleague in this matter indicates is the law; but it is our position that a fair reading of the Internal Revenue Code, a reading of the Internal Revenue Code which has

not been made by any court, as far as I can tell under the present terms of the Internal Revenue Code, and for the protection and preservation of vested property rights in the State of Michigan, which is a question involved in this matter, that in 1956 when Michigan adopted a valid tax-lien registration act, some four years before the Carlsons bought this property, that that Act automatically in accordance with the terms of the Internal Revenue Code required the Internal Revenue Service to file under state requirements on any tax liens which either came into existence after August of 1956 or for any after-acquired property which would become subject to the tax lien after August of 1956.

My colleague says in his brief, it refers to the Glass City Bank case which deals with this question of whether a tax lien affects after-acquired property, a point which I conceded is the law, that when Mr. Donnelly became the owner in fee simple upon the death of his wife but before the purchase of the property by the Carlsons, that the federal lien became part of the chain of title of the property [fol. 14] in question. I do not question that point. The lien attached; that is the law. But Section 6323(a) of the Internal Revenue Code of 1954, which was in effect at the time involved, requires that in order for the lien to be valid as against purchasers, mortgagees, et cetera, that notice of that lien be filed, one: With the office designated by the state, whenever the state has designated such an office; or two: If the state has not designated an office, with the Clerk of the District Court.

When the property became that of Mr. Donnelly the taxpayer alone in 1960 the law on the books in the State of Michigan, promulgated by the State of Michigan pursuant to the requirements or permission granted by the Internal Revenue Code, required the filing of notice of tax lien with the Registrar of Deeds of the county in which property subject to the lien was situated.

THE COURT: There is no allegation, as I recall, in the government's complaint that says Livingston County refused to file.

MR. PEVOS: No, sir, absolutely no such allegation. There is nothing that indicated that they couldn't have

taken that notice back in 1950 and filed it in Livingston County, but they didn't know he had property in Livings-
[fol. 15] ton County until the wife died. That's my feeling in this matter.

THE COURT: Such as Oakland County refused to take.

MR. PEVOS: No, there was no such allegation in this matter.

As you see, your Honor, the Wayne County Registrar of Deeds accepted a notice in 1950. Mr. Donnelly having lived in this county the Internal Revenue apparently did not realize that there may be property in Livingston County until some late date after the Carlsons had bought the property.

Now, a step farther—

THE COURT: Carrying on further, the filing was with the District Court here which, under the old rule was adequate, was against Mr. Donnelly, you argue; and therefore, it did not become a lien on the Livingston County property because at that time, the time of filing it was owned by tenants in the entireties.

MR. PEVOS: That is correct, your Honor. And I don't believe that my opponent in this matter questions that particular allegation of law.

There is a case cited in our brief, United States v. Nathanson, there are other cases indicating that a tax
[fol. 16] lien does not attach to property owned by the entireties when the liability is that of an individual spouse.

So, I say it is our position, number one: That when the lien attached to this property in 1960, upon the death of Mrs. Donnelly, that the law then in effect required a filing of a notice of that lien with the registrar of deeds in the county in which that property which was situated. That notice not having been filed the Carlsons are protected purchasers under Section 6323(a) of the Internal Revenue Code. Now that is our first argument in support of this motion.

It is our further argument, your Honor, that upon the passage of the Universal Federal Tax Lien Registration Act in the State of Michigan on August 11, 1956 that the Internal Revenue Service became compelled by virtue of

the clear wording of Section 6323(a) of the Internal Revenue Code to file notices of all tax liens with the registrar of deeds in the counties in which the property was located even if they have filed it with the Clerk of the District Court previously.

Now in regard to that point, my colleague cites in opposition the case of In Re Dartmont Coal Co., which is a case handed down in 1931 by the Fourth Circuit Court of Ap-[fol. 17]peals in 46 F.2d 455. In that particular case, and my research of this matter indicates that this is the only case on this subject dealing with the effect of a state passing a law qualifying local registration under the permission granted by the Internal Revenue Code what happens to liens filed before.

Now in the Dartmont case the Federal Internal Revenue Service had filed a lien or notice of lien with the District Court in 1926 in West Virginia. In 1927 West Virginia passed a state law which authorized the filing with the Clerk of the County Courts notices of liens affecting property located in their respective counties. That law that was passed in 1927 had a provision in it that said that all federal tax liens previously filed with the Clerk of the District Court would become invalid if they were not refiled with the County Courts within four months from the date of the state law, and it also had a clause in that same section that said that if this is held invalid by the federal courts that the rest of the statute will remain in effect.

So the Court of Appeals looking at this law said that the state in effect acknowledges that they don't have the right to do this because they have a savings clause in there and the state is attempting to invalidate federal [fol. 18] liens.

Now I don't argue the point of law that was enunciated in that particular case, that the state has no right to pass legislation voiding or effecting federal tax liens. This is in interference with the federal government, but I want to emphasize a couple of points of history in this matter which I think are relevant to this matter.

Prior to 1913, as indicated in this Dartmont case, the Internal Revenue Service did not have to file notice of liens

in order for those tax liens to be valid as against mortgagees, purchasers, et cetera. A very harsh situation where the creation of a tax lien would be secret as far as an innocent party was concerned, and yet effective without any necessity of filing.

In 1913, Congress saw fit to amend or correct this situation by passing Section 3186 of the United States Revised Statutes, or of the Internal Revenue Code at that particular time, and this was the section that was involved in this Dartmont case. This section, Section 3186, read that:

> "That if any person liable to pay any tax neglects or refuses to pay the same after demand, the amount shall be a lien in favor of The United States from the [fol. 19] time when the assessment list was received by the collector, except when otherwise provided, until paid, with the interest, penalties, and costs that may accrue in addition thereto upon all property and rights to property belonging to such person; provided, however, that such liens shall not be valid as against any mortgagee, purchaser, or judgment creditor until notice of such liens shall be filed by the collector in the office of the Clerk of the District Court of the district within which the property subject to such lien is situated; provided further, that whenever any state by appropriate legislation authorizes the filing of such notice in the office of the registrar or recorder of deeds of the counties of that state—"

And I will skip down because it goes into some other details.

> "—such lien shall not be valid in that state against any mortgagee, purchaser or judgment creditor until such notice shall be filed in the office of the registrar or recorder of deeds of the county or counties—" et cetera.
>
> "—within which the property subject to the lien is [fol. 20] situated."

Now, this was the law as it stood at the time of the Dartmont case. In 1934 Congress saw fit to amend that section of the Internal Revenue Code by completely chang-

ing the emphasis of the filing requirements so as to provide basically in the same manner as presently provided up until November of '56, because there was a change at that time which I will get into in a moment, but in 1934 Congress saw fit to amend this particular requirement by providing first, not second, but first for the filing with the local registrar of deeds except where the state did not designate such an office. They changed the whole emphasis of the Section 3186 which the Court in the Dartmont case indicated or construed at that particular time, and the Court in the Dartmont case saying— I can't put my finger on the exact quotation now—indicating that there was no basis in reviewing that statute. They indicate that Congress had intended to allow the states to affect the validity of filing by the passage of subsequent legislation which would in effect require the filing of the notices.

Now, the Court of Appeals in the Dartmont case, as I indicated, was passing on a section of the Federal Internal Revenue Code which had been on the books for a relatively [fol. 21] short period of time which had an emphasis on District Court filing. They were construing a state law which had in their opinion, and they don't use the word "audacity" but it is read throughout their opinion that they felt the State of West Virginia was very audacious to say that the federal liens would be invalid if they weren't refiled, and they went on to say that because of this that the provisions of the state law requiring the refiling were not valid. It is our position that Congress has shown by its changing of Section 6323(a) of the Internal Revenue Code, which was previously Section 3672 of the Internal Revenue Code of 1939, which, as I indicated, was basically the same section from 1934, that Congress intended to protect innocent purchasers, pledgees, mortgagees, and judgment creditors, and that Congress was allowing the states to effectuate such protection by adopting laws pursuant to the authority granted in the Internal Revenue Code; and Congress uses the phraseology that:

> "Notice of lien shall be filed with the local office whenever the state has by law designated such a local office."

I submit that the definition of what Congress meant by the word "whenever" has never been passed upon, and I [fol. 22] am asking that this Court determine that the word "whenever" means according to the meaning of Websters Third New International Dictionary:

> "At any or all times back, in any or every instance in which at whatever time, no matter when."

That Congress by using the term "whenever" the state adopts such a law, has indicated that the filing shall be done in accordance with that law when such law is passed by the state.

It is our contention, particularly in view of the fact that the Internal Revenue Service was filing tax lien notices for 33 years under Michigan law prior to 1956, that when the '56 law went into effect if they hadn't filed notice with the registrar of deeds, where they should have filed under the previous law, they should have gone in 1956 and filed such a notice, which they did not do in this case.

It is our position that the Carlsons being innocent purchasers for value; protected as such by the Internal Revenue Code; no notice of tax lien being filed in Livingston County prior to the purchase of their property, and not until some eight or nine months afterward, are parties protected by the Internal Revenue Code; that their title [fol. 23] stands supreme as against the tax liens asserted in this matter; that this Court should dismiss the complaint as to the property indicated in the complaint, or described in the complaint; and that a judgment be entered by this Court clearing the cloud from the title of the Carlsons.

THE COURT: They did file a proper lien in this case, did they not, with the description of the property, et cetera, in 1961?

MR. PEVOS: In '61 it was not required to file a description. It was not required even after 1956 to file a description of the property when Michigan changed the law. They did, according to the complaint, go ahead in 1961 when Mr. Donnelly apparently executed a second extension of his liability, and the Internal Revenue Service took that notice and filed it out in Livingston County. This was months after my—

THE COURT: But I mean to say, they did comply.
MR. PEVOS: They did.
THE COURT: In '61.
MR. PEVOS: And by complying in '61, as I allege in my brief, they evidenced a belief that they were compelled by the Michigan law to file such a notice, because [fol. 24] there wasn't anything that occurred in 1961, other than the discovery of maybe Mr. Donnelly's interest in this property, which would have required them, if their theory is right, to do anything but to sit back on their hands and rely on the filing with the District Court in 1950; but yet they go ahead and they do file in Livingston County.

Now, your Honor, there are other points which I have not raised in my motion, points of law which I think perhaps in this overall must be briefly touched upon. Mr. Donnelly signed an extension of his liability a year after the Carlsons purchased the property, which carries his liability, according to the complaint, until December 31, 1966. Mr. Donnelly died on January of 1963, over four years ago. The Internal Revenue Service got around to doing something in this matter through the office of the district attorney on December 31, 19— on December 30, 1966, the day before the last extension would have expired, some four years after Mr. Donnelly died. On the same day the Internal Revenue Service filed a petition for probate of the estate of Mr. Donnelly in the Wayne County Probate Court, four years after Mr. Donnelly died. Who knows what property Mr. Donnelly had during those four years that could have been attached for this liability, [fol. 25] property which would have satisfied this obligation and not subjected the Carlsons to $30,000.00 in tax liens against property which they bought in good faith and have put over $40,000.00 into; beside the point that the complain in this matter was not even served on the Carlsons until May the 4th, 1967, over four months after the suit was filed; and I raise an affirmative defense, which this Court is not called on at this time to rule on, as to the lack of prosecution by the government of this case. Unfortunately, the government sits in a position in these matters which puts it above all, apparently all rules of law which

would apply to any private individuals, and I question that in this situation; the government is immune from laches; the government can do no wrong; you can't sue the government; the offices of the government cannot be guilty of unreasonable delay.

I don't question the law that my brother has cited in there, but I question the reasonableness and the equities of the situation.

I wish to point out that a district court—this case I did not have in my brief, and I ask the Court's indulgence. In the case of City of Winston-Salem v. Powell Paving Co. It was rendered by the District Court of North Carolina. It is in 7 F.Supp. 424.

[fol. 26] THE COURT: Seven?

MR. PEVOS: 7 F.Supp. Page 424.

THE COURT: That is an old one.

MR. PEVOS: That's an old case, your Honor; but it says that the priority of The United States as to claims for unpaid income taxes is not an attribute of sovereignty, but depends on acts of Congress. And when they say in their brief that laches aren't a defense here, they are saying laches aren't a defense because The United States in its sovereign capacity is free from the defense of laches. I claim that the acts of Congress dealing with the law involved here, contrary to what the Court of Appeals in the Dartmont case seems to indicate, must be construed in accordance with the way Congress obviously intended, and that is to protect innocent parties, not to literally construe in favor of the government on any question.

This Court, I feel, has an obligation to protect the property rights in the State of Michigan, and I say a step further, in 1966 the Congress of The United States saw fit to pass legislation which would have avoided this situation had it been in effect a couple of years ago. Now the filing or the signing of an extension does not automatically carry with it an extension of the lien for some indefinite period, but the Internal Revenue Service must file notice of that [fol. 27] extension in the same manner as they must file a notice of lien with the registrar of deeds, et cetera, within one year after the extension is signed; and any assessments rendered prior to 1962 must be refiled according to

this new section of the Internal Revenue Code. It's an amendment of Section 6323. They must be filed within calendar year 1967 or they are no good.

So, Congress has indicated throughout the years that it was dedicated to the protection of taxpayers, because if the protection of the government is what it sought, it could have left things stand as they were prior to 1913, where the government had secret liens and that no filing was necessary.

I feel that this Court should construe this matter in accordance with what appears to be the clear intention of Congress, and that is to require the filing when such a local filing law becomes effective, and particularly require the filing in this case when the previously entireties property became subject to the lien in 1960.

Thank you, your Honor.

MR. DEEB: Your Honor, first I would like to cover in my brief the question of the validity of the federal tax lien that was filed in the Federal District Court, and this [fol. 28] necessitates a discussion of the case United States v. Union Central Life Insurance Company.

In that case the Supreme Court compares this Circuit and its decision in U.S. v. Youngblood to the Eighth Circuit's decision in U.S. v. Rasmuson and says that because of this conflict that the Court has granted certiorari.

Now, in the paragraph before that it mentioned the fact that the various counties—some of the counties in Michigan from '53 to '56 had refused to accept the federal tax liens; and in this particular case, the Union Central case arose out of this during this time, and consequently the fact situation included this very inflammatory situation, namely: That the federal government couldn't even go in there and file its own forms.

I would like to stress that this case—the Supreme Court in the Union Central case stated that at no time to their knowledge had the Internal Revenue Service deviated from their form that's prescribed by 3670 and 3671, sections of the Internal Revenue Code.

They may have attempted to avoid problems—not problems, but you may know that what you are doing is legally sufficient, or have good reason to believe that if the Su-

preme Court would review the situation that existed in [fol. 29] Michigan at the time that this lien was filed in 1950, experts in the Internal Revenue Service may well have felt that they had the law as reaffirmed in 1942 by the Congress of The United States when it changed the wording in the statute that was latched onto by the Federal District Court in the Grand Rapids—in the U.S. v. Maniaci. This is cited also in the Union Central case, along with U.S. v. Youngblood, as opposing the Sixth Circuit case; and the Court discusses U.S. v. Maniaci—I think that is the correct pronunciation—in terms of this case motivating Congress. The Supreme Court felt Congress acted in order to change the wording so the federal government, the Internal Revenue could use their form. Mind you, this form was a very general form in terms that encompassed all the properties that the taxpayer owned in the particular area that was governed by whatever recording office was the valid place to record.

So I don't feel that the fact that the federal government did not go to the particular county in which this property was located in 1950, didn't do it until 1961, does not affect or distinguish our case from the Union Central case.

In short, I feel that the lien that was filed in the Federal District Court in 1930—1950, excuse me, was proper-[fol. 30] ly recorded and valid; and therefore, it encompassed this property in this particular county, and I don't see how—

THE COURT: Well, wait a minute. It is argued that it did not cover the property because it was owned as tenants by the entireties.

MR. DEEB: Yes, your Honor, I will get to that. That would be under Section B, I think, your Honor.

I would like to draw the Court's attention to the discussion, in the Supreme Court's discussion of the policy that Congress had and the policy that the Supreme Court recognizes Congress had when it developed this statute and its companion statutes which developed the lien, the 3670 and 3671.

I notice that my brother here has been mentioning Section 6323. I think they are the same only the present section number is 3672. I think—

MR. PEVOS: If you will excuse me, you misstated yourself. 3672 was the '39 code; 6323 is the '54 code.

MR. DEEB: Well, when I refer to 3672 I am referring to the same one my brother has referred to, your Honor.

THE COURT: Did the government file any govern-
[fol. 31] ment lien in Livingston County before 1961?

MR. DEEB: Not that I recall, your Honor.

THE COURT: It was solely filed in the District Court here?

MR. DEEB: The only lien that would cover this particular property would be the lien recorded in 1950 in the Federal District Court, and that would cover this property if that's a valid lien, and I submit it is under the Union Central case. The Union Central case makes a general statement, and it states that because of the fact that Michigan has this requirement for its own form which was part and parcel of its statute which designated the proper recording office that it therefore did not designate the office, the proper office for recording under this section, 3672(a)1

THE COURT: Well, I am just asking you a question of fact. Did the Internal Revenue file any lien at all, or attempt to file any lien in Livingston County prior to its first filing in 1961?

MR. PEVOS: In this case, your Honor?

THE COURT: In Livingston County.

MR. PEVOS: But you refer to in this case, not as a general matter?

THE COURT: Yes, in this case.

[fol. 32] MR. DEEB: I have no knowledge of that, your Honor.

THE COURT: All right. Now, there is no averment that Livingston County did not accept filings, is there?

MR. DEEB: No, your Honor, that's no point. I am stating—

THE COURT: That is immaterial, you mean?

MR. DEEB: I am saying that because of the wording that the Supreme Court has used in this Union Central decision that it is immaterial. They were trying to settle this difference between the Eighth Circuit and the Sixth Circuit, and certainly they emphasized that in the decision

in the paragraph preceding the one I pointed out, but—

THE COURT: Let me ask you this—

MR. DEEB: Yes, your Honor.

THE COURT: If this lien were against Mr. John Smith and filed as to name only without description, as they file it, is it a requirement that all other counties within the district must accept as liens on all real estate by anyone of the name of John Smith?

MR. DEEB: No, your Honor. What would happen would be the person who is reviewing the abstract would [fol. 33] contact the Federal District Court and if there were any names similar to the one that he had before him —well, John Smith is a problem, but, your Honor—

THE COURT: How many Conleys are there or Donnellys?

MR. DEEB: I am sure I don't know, but, your Honor, the point is that under the present situation it is just restricted to a county, and you have the same problem there.

THE COURT: You see in the Youngblood case—didn't Mr. Youngblood, then a registrar of deeds, refuse to accept filings because it did not incorporate the property description?

MR. DEEB: Yes, your Honor.

THE COURT: And that brought on the litigation?

MR. DEEB: Well, not necessarily, because in the—

THE COURT: And so did Oakland County.

MR. DEEB: But in the Eighth Circuit case there wasn't any such denial. It was a case where the state law required the lien to particularize the property.

THE COURT: Why did the Internal Revenue file in 1961?

[fol. 34] MR. DEEB: All I can say is, your Honor, that it wasn't an act of an attorney for the Internal Revenue. It was probably just an act of someone working in the office.

THE COURT: It doesn't make any difference, but they did file in 1961 in Livingston County.

MR. DEEB: They did, your Honor. Possibly they just found out then that this man might have owned property there; so they ran in there. If you remember, your Honor,

this lien is just general, and it could attach to cars or anything that is in that county.

THE COURT: In that county.

MR. DEEB: Yes. At that time they may not have known that the Donnellys owned this property, I don't know; but that is irrespective of the fact that the lien established the time of priority in 1950 and attached to all the property.

The only point I can bring out now is the fact that I feel that the difference in the fact situation between our case, the instant case and the Union Central case is the fact that in the Union Central case the clerk refused to take the lien. I feel that the Supreme Court did not base its decision on that.

THE COURT: Well, the fact that the Livingston [fol. 35] County Registrar of Deeds did accept the lien would indicate that it would, would it not? I mean the inference would follow, would it not?

MR. DEEB: Well—

THE COURT: That it would have in 1951-'52?

MR. DEEB: Yes, it would have, probably; I don't know. You see, your Honor, the statement is made that the attorney general of Michigan came out with his opinion, and after that—and the opinion wasn't brought out until '53; so I think it is fair to assume that prior to '53, in 1950 if the Internal Revenue had gone up to this county and tendered the lien it would have been accepted; I don't know.

THE COURT: All right. Now, the federal statute requires that notice—and it's been argued by the defendant here that the federal statute says whenever there is such law—

MR. DEEB: I will get to that issue too, your Honor, in a moment.

THE COURT: All right, let's hear it.

MR. DEEB: But I just wanted to cover this fact that the law as proclaimed in this case, the Supreme Court case, is not limited to this particular fact situation and this particular instance where the lien was denied.

[fol. 36] Moving on to the question of the tenants by the entireties, the fact that the Donnellys—well, under Michi-

gan law were protected from the lien attaching, and I disagree with my brother's position on that. For one thing—

THE COURT: Well, here is what you are asking the Donnellys to do. You are asking that when they want to buy a piece of property in Livingston County that they must come to Detroit and determine if the property has any liens on it.

MR. DEEB: You mean the Carlsons?

THE COURT: Yes.

MR. DEEB: Well, your Honor, this law was set up before, I think, prior to 1913, when this dual statute was set up, the one where the state tells you to record or otherwise it would—the proper place to record would be the Federal Court. That was set up—

THE COURT: There is a new estate created, was there not, on the death of Mrs. Donnelly?

MR. DEEB: Under Michigan law, it is my understanding that the husband automatically gets title in fee simple.

THE COURT: So it is a new estate; is it not?

[fol. 37] MR. DEEB: Well, your Honor, under Michigan law, you see, this is an important point, that first of all my brother cites United States v. American National Bank of Jacksonville, well it's a Florida case, and they say that state law on this particular issue of when a lien attaches to a property interests the state law applies. That case makes that statement, but my brother first cites an Eighh Circuit case, the United States v. Hutcherson, which therefore doesn't apply to this particular issue; and the one Michigan case he does cite that applies is United States v. Nathanson. The fact situation that they are litigating there is rent from realty, not realty I submit, your Honor; and I also submit, your Honor, that—I must apologize, I had two Michigan cases and I can't find them now, that brought out this point, your Honor, that under Michigan law that a lien against property held by the entireties that it attaches but is unenforceable, and at such time as the property comes into sole ownership of the person who incurred the debt on which the lien is based, then the lien is enforceable.

I would have to submit these cases to the Court at a later date, possibly later on today, but I don't have the two Michigan cases. I lost—

THE COURT: What if Mr. Donnelly had died [fol. 38] first?

MR. DEEB: Well then they would have been attached but unenforceable; that is my understanding of the Michigan law on that point; and I note, your Honor, that my brother has not brought out any Michigan law on this point, but he still believes that this lien could not attach at all.

THE COURT: That is right, he takes that position.

MR. DEEB: Yes. Now, in that light, your Honor, the issue was made by my brother that this new estate, created on the death of Mr. Donnelly's wife, required this "whenever". The word "whenever" means that they had to refile according to the law at that time, which would have required the Internal Revenue to file in the county. Well, I submit, your Honor, first that these cases I cite develop a policy that means—that brings forth the idea that once this lien attaches the federal government doesn't have to follow this person around to find out what happens to his property and, in fact, the Union Central case mentions this policy, that the Supreme Court recognizes this need in the collection of taxes, the importance of which is espoused by Congress—

THE COURT: But they never did file in Livingston [fol. 39] County.

MR. DEEB: No, they never did; but I am saying, your Honor, that my brother's position that the statute requires that all after-acquired property be refiled, the lien on all after-acquired property be refiled is unfounded.

THE COURT: No, he does not claim that. He says that they never did file in Livingston County—

MR. DEEB: Yes, your Honor—

THE COURT: —pursuant to the Michigan statute of 1956; and therefore, four months after '56 they should have filed; is that it?

MR. PEVOS: No, there is no four-month requirement.

MR. DEEB: That is a West Virginia case that was struck down.

THE COURT: But you see, they never did file until 1961, some five years later—

MR. DEEB: Yes, your Honor—

THE COURT: After, long after.

MR. DEEB: I contend that the 1950 filing in the District Court was valid and it runs clear through to today, and it didn't stop just because the estate passed into Mr. Donnelly's property as a fee simple. The very policy [fol. 40] espoused in the Union Central case—

THE COURT: All right. Now, we get to the word "whenever", and the statute says whenever there is such a law—

MR. DEEB: All right, your Honor I state—

THE COURT: Now that happened subsequent, did it not, the federal statute says that whenever the state law provides a place, and so on?

MR. DEEB: Yes, your Honor.

THE COURT: Now, the word "whenever" generally refers to what?

MR. DEEB: Well, your Honor—

THE COURT: Whenever there is a law passed they have got to file.

MR. DEEB: No, no—

THE COURT: Yes, yes.

MR. DEEB: But we are talking about a past lien.

THE COURT: The past lien is good, but whenever the state law comes in and says whenever there is a lien, meaning in the future, whenever there is such an act passed in Michigan it—

MR. DEEB: But—

THE COURT: Wait a minute, and Michigan passed [fol. 41] it, that the federal government, or the Internal Revenue Service must file its lien—

MR. DEEB: Yes, your Honor.

THE COURT: Now, when does "whenever" mean? The word, as I see it, and it's been defined here as soon as or whenever generally refers to the future or whatever time it happens.

MR. DEEB: Yes, your Honor. Well, I—

THE COURT: And there are some cases that my Law Clerk has cited here to substantiate what I am talking

about. Doesn't this then mean that once the state does require such notice it must be complied with, and the government having failed to comply with it in Livingston County until 1961, that's some seven years after the Act became effective.

MR. DEEB: Well, your Honor, I point out the Michigan law on this point that the levy attached to 1950 to the joint property, the property held by entireties. Now, if that's true, then the lien never left the property. It was—

THE COURT: Let's assume it never left. Let's assume that for the purpose of filing that the filing here was satisfactory, but then the state passed a law which the United States Supreme Court said was all right because it is a [fol. 42] uniform act and effective in all states. It says whenever that state does it; does it not?

MR. DEEB: Well—

THE COURT: Then you have to file.

MR. DEEB: When does the "whenever" apply? Does it apply to new liens or old liens that have to be filed?

THE COURT: That is where you two part company. Now, whether or not there is a new lien to be filed by reason of the death of the one, is there a change of status that requires a new filing; and there is your issue. Don't argue any further. I want some briefs on that point alone, if you can.

MR. DEEB: Well, I told you I had two Michigan cases.

Getting on to the general "whenever", that is all passed liens that were filed in the Federal District Court had to refiled in 1956—

THE COURT: That is not such a task; the state said so.

MR. DEEB: Well, your Honor, no provision was made to save the priority that was logged. That is—

THE COURT: They had no priority. They had it only as to Mr. Donnelly.

[fol. 53] MR. DEEB: Well—

THE COURT: She had an estate in 1956; am I correct?

MR. DEEB: What if—your Honor, may I make a statement?

THE COURT: That is what I want a brief on.

MR. DEEB: That is another issue, your Honor.

THE COURT: No, it is about the same.

MR. DEEB: My point is this, your Honor: That if someone filed a levy in 1955, or the day before 1956, December 31, and the next day we had to run in there and file, then that guy would be ahead of us because of the fact that we lost our preferred position; and there was no provision made by Congress that this priority be saved, and I submit to the Court it was Congress' intent to create priority and then destroy it; create—

THE COURT: No, but Congress has protected mortgagees, purchasers and judgment creditors, has it not, by the statute?

MR. DEEB: By requiring notice, but they also protected the interest of the government by creating a lien that was unsurpassed in present law. It was just—

THE COURT: All right, if you will, both of you [fol. 44] you have long gone over your time. If you will, submit a brief on those two points, both of you; that is whether or not there is a creation or could be a creation of a new lien by reason of a change of status of husband and wife as affects property owned by the entireties. Do I make myself clear?

MR. DEEB: Yes, that is the first issue.

THE COURT: All right, what is the next one?

MR. DEEB: The next one is whether all liens filed prior to 1956 had to be refiled.

THE COURT: No, if the first is that there is a new situation created, then there is no sense to the second.

MR. DEEB: Well, yes, your Honor, but if the first—I suppose they are both about the same, yes.

THE COURT: And whether or not there is necessity for a new filing after.

MR. DEEB: Thank you, your Honor.

MR. PEVOS: Thank you, your Honor.

[fol. 45]

CERTIFICATE OF COURT REPORTER

UNITED STATES DISTRICT COURT)
) ss
EASTERN DIVISION OF MICHIGAN)

I, Robert G. Conley, one of the Official Court Reporters for the above court, do hereby certify that I recorded stenographically the proceedings had in the above-entitled and numbered cause before the Honorable Fred W. Kaess, District Judge, at Detroit, Michigan, on Monday, July 3, 1967; and that the foregoing and annexed forty-four (44) typewritten pages constitute a complete and accurate transcription of the proceedings had at said time.

/s/ Robert G. Conley
ROBERT G. CONLEY
Official Court Reporter
856 Federal Building
Detroit, Michigan

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Civil No. 29428

UNITED STATES OF AMERICA, PLAINTIFF

vs.

ESTATE OF THOMAS S. DONNELLY, SR., OSCAR A. CARLSON and GENEVIEVE S. CARLSON, DEFENDANTS

OPINION AND ORDER

APPEARANCES:

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Facts:

This is a suit in equity filed under Sections 7401 and 7403 of the Internal Revenue of 1954. The bill of complaint seeks to foreclose certain real property located in Livingston County, Michigan, arising out of a deficiency assessment of income tax against Thomas S. Donnelly, Sr., and to give priority over the rights of defendants Oscar A. Carlson and Genevieve S. Carlson, who are subsequent purchasers of the property in good faith and for value.

The facts are not in dispute and are as follows: On April 16, 1949, Thomas S. Donnelly, Sr. and Jessie C. Donnelly, his wife, acquired by warranty deed certain property located in Livingston County, Michigan. Said deed was properly recorded in Livingston County. On June 23, 1950, the Tax Court of the United States determined that Thom-

as S. Donnelly, Sr., individually, was liable for income taxes and penalties for the years 1943, 1944, 1945, in the amount of about $26,000.00. Assessments of the taxes were made and notice of the tax liens was filed with the *Wayne* County Register of Deeds on November 28, 1950. On November 29, 1950 a notice of tax liens was also filed by Internal Revenue Service with the Clerk of the United States District Court for the Eastern District of Michigan, Southern Division, at Detroit, Michigan.

On February 14, 1956, Donnelly executed a statutory waiver extending the time of collection of the tax liabilities for a period of five years.

August 11, 1956 the Uniform Federal Tax Lien Registration Act became effective in Michigan.[1] Subsequently a "Certificate of Non-attachment of Federal Tax Lien", referring to separate property of Donnelly located in Detroit, Michigan, was filed in September, 1956, and was attached to those notices previously filed with Wayne County Registrar of Deeds and Clerk of United States District Court in 1950. Jessie C. Donnelly, wife of the taxpayer, died on May 28, 1960 and her death was recorded with the Livingston County Register of Deeds. On August 6, 1960, after negotiation through a real estate broker in Brighton, Michigan, defendants Oscar A. Carlson and Genevieve S. Carlson purchased the property situated in Livingston County by warranty deed. The defendants Carlson paid $15,250.00 for the property.[2] The purchase was consummated after an abstract of title was prepared by the Livingston County abstract office, Howell, Michigan, disclosing no notices of tax lien affecting real property owned by

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[1] The "Uniform Federal Tax Lien Registration Act" [Act 107, P. A. 1956 effective August 11, 1956; C L. 1948, § 211.661 et seq.] repealed the Act 104 of Public Acts of 1923. The Act eliminated the requirement of a description of property and was in effect for almost six years prior to the purchase by defendants Carlson. It was not until after the purchase by defendants that notice of any lien was filed with the Register of Deeds for Livingston County pursuant to Act 107.

[2] Since the purchase by Carlson and prior to the commencement of suit, the defendants have expended over $25,000 on improvements to the property.

Donnelly. The abstract was examined for defendants Carlson by a law firm who passed upon the marketability of defendants' title in the property, in accordance with a written opinion dated July 22, 1960.

On March 20, 1961, the Internal Revenue Service filed a notice of tax liens with the Register of Deeds of Livingston County, in accordance with Act 107 of Public Acts of 1956, and on April 17, 1961 a second statutory waiver extending the time for payment to December 31, 1966 was signed by Donnelly. Donnelly died intestate on January 13, 1963 and a petition for appointment of administrator was filed by plaintiff with the Wayne County Probate Court (No. 564-956) on December 30, 1966.[3]

Suit to foreclose the tax lien was commenced by the filing of a complaint with this court on December 30, 1966, with service being made upon the defendants Carlson on May 4, 1967.

The defendants Carlson move for summary judgment in their favor, urging upon the court the failure of the government to comply with the Michigan statute regarding notice of tax liens, thus entitling them to the protection afforded bona fide purchasers in good faith without notice. The position of the government is that notice was given constructively to the defendants by the Internal Revenue Service and such right to foreclose may not be lost through laches.

OPINION

Rule 56 of Federal Rules of Civil Procedure provides for this court to grant a summary judgment where there is no issue as to any material fact and the moving party is entitled to judgment as a matter of law.

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[3] The Probate Code provides that "if the widow, husband, or next of kin or grantee shall neglect for 30 days after the death of the intestate to apply for administration, or to request that administration be granted to some other person, one or more of the principal creditors may file such petition, or the same may be filed by any person in whose favor a right or cause of action exists which cannot be enforced without such administration or by the public administrator of the proper county." C. L. 1948, § 702.51

The controlling issue is whether a tax lien of the United States is valid as against a subsequent purchaser of real estate, who takes title without actual knowledge of an existing lien and where the notice of the lien is filed only with the Clerk of this court and not with the Register of Deeds in the county where the property is located.

Under the provisions of Section 3672 of the Internal Revenue Code of 1939, it is provided that such liens shall not be valid as against any purchaser until notice thereof has been filed in accordance with the law of the state in which the property subject to the lien is situated, whenever the state has by law provided for the filing of such notice.[4]

By Act 104 of the Public Acts of the State of Michigan for the year 1923 (C.L. 1948, § 211.521 et seq.), the State of Michigan provided for the filing of notices of federal tax liens in the office of the Register of Deeds, pursuant to Section 3672 of the Internal Revenue Code of 1939, and thereby provided that the notice of lien should set forth, among other things, a description of the land upon which a lien is claimed.

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[4] "§ 3672. Validity against mortgages, pledgees, purchasers, and judgment creditors

(a) *Invalidity of lien without notice.* Such lien shall not be valid as against any mortgagee, pledgee, purchaser, or judgment creditor until notice thereof has been filed by the collector;

(1) *Under State or Territorial laws.* In the office in which the filing of such notice is authorized by the law of the State or Territory in which the property subject to the lien is situated, whenever the State or Territory has by law authorized the filing of such notice in an office within the State or Territory; or

(2) *With clerk of district court.* In the office of the clerk of the United States district court for the judicial district in which the property subject to the lien is situated, whenever the State or Territory has not by law authorized the filing of such notice in an office within the State or Territory; or

(3) *With clerk of District Court of the United States for the District of Columbia.* In the office of the clerk of the District Court of the United States for the District of Columbia, if the property subject to the lien is situated in the District of Columbia."

The purpose of filing notice is to avoid the harsh effect of enforcing a secret tax lien upon innocent purchasers. *U. S.* vs. *Gilbert Associates, Inc.*, 345 U.S. 361 (1953); *U. S.* v. *Hodes*, 355 F.2d 746 (1966), cert. granted, 384 U.S. 968 That the defendants were bona fide purchasers who acted in good faith and for value is not disputed. Whether they had notice or should have had notice is disputed.

The government asks this court to adhere to their reasoning that they complied with the notice provisions as set forth in § 3672 by the filing with the Clerk of this court. They contend that since *U.S.* v. *Union Central Life Ins. Co.*, 368 U.S. 291 (1961), such state law had never existed and, therefore, they complied with § 3672 of the Code. Their position, apparently sound on its face, is faulty for two reasons.

First, the *Union Central* facts are clearly distinguished from this case in that an attempt had been made in the *Union Central* case to file notice with the Register of Deeds in 1954, which had been refused by the Register of Deeds pursuant to a Michigan Attorney General opinion rendered in 1953, which ruled that federal tax lien notices not containing a description of the property are not entitled to be recorded. In the instant case, there had been no attempt to file with the Register of Deeds. There is no indication that the Register would refuse in 1950, in light of the fact that the Register of Deeds for Wayne County accepted notice and the opinion of the Attorney General for Michigan was not rendered until three years later.

Second, this court views the acts of the parties in relation to the laws in existence at that time. Thus, we have a Michigan statute requiring notice of any federal tax lien to be filed, with a description of the property, in the county where the property is located. This same statute was later declared not to be the law by the Supreme Court of the United States. However, even where a statute is unconstitutional and hence declared void as of the beginning, the Supreme Court has held that its existence before it has been so declared is not to be ignored. *NLRB* v. *Rockaway News Supply Co.*, 345 U.S. 71 (1953). This court thinks that the principal stated by Chief Justice Hughes for a

unanimous court in *Chicot County Drainage District* v. *Baxter State Bank*, 308 U.S. 371 (1939), is applicable to this case.

> "The courts below have proceeded on the theory that the Act of Congress, having been found to be unconstitutional, was not a law; that it was inoperative, conferring no rights and imposing no duties, and hence affording no basis for the challenged decree. *Norton* v. *Shelby County*, 118 U.S. 425, 442; *Chicago, I. & L. Ry. Co.* v. *Hackett*, 228 U.S. 559, 566. It is quite clear, however, that such broad statements as to the effect of a determination of unconstitutionality must be taken with qualifications. The actual existence of a statute, prior to such a determination, is an operative fact and may have consequences which cannot justly be ignored. The past cannot always be erased by a new judicial declaration. The effect of the subsequent ruling as to invalidity may have to be considered in various aspects,—with respect to particular relations, individual and corporate, and particular conduct, private and official.
>
> "Questions of rights claimed to have become vested, of status, of prior determinations deemed to have finality and acted upon accordingly, of public policy in the light of the nature both of the statute and of its previous application, demand examination."
>
> (308 U. S. 374)

An examination of the facts will disclose that the Michigan statute had been approved by this court and the Court of Appeals. See *U. S.* v. *Maniaci*, 36 F. Supp. 293 (1933) and *Youngblood* v. *U.S.*, 141 F.2d 912 (1944). And yet in 1950, when notice, with a description, was to be filed in Livingston County, the government failed to comply. Reasons for not filing the notice were not given, except to say that in the *Union Central* case the Supreme Court held that no such state law could exist. That decision, however, had not been rendered until 1961, some 16 months after the purchase by the defendants. Prior to that decision, there was no indication that such statute would be declared per

se illegal. On the contrary, every indication was that the statute would be upheld.

Thus, in the light of the foregoing facts and reasons, this Court cannot but hold that the Carlsons were bona fide purchasers in good faith without notice.

This Court does agree with the government on the question of laches, that such right may not be lost through laches. *U. S.* v. *Mr. Hamburg Bronx Corp.*, 228 F. Supp. 115 (1964); *U. S.* v. *Summerlin*, 310 U.S. 414 (1940). And the United States may proceed to recover back taxes from the Estate of Donnelly.

Therefore, IT IS ORDERED summary judgment in favor of the defendants Carlson should be and hereby is granted. Plaintiff, United States, has no interest, lien, or claim in the property described in the complaint.

/s/ Fred W. Kaess
United States District Judge

[Title Omitted in Printing]

NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN that the United States of America, the above named Plaintiff, hereby appeals to the United States Court of Appeals for the Sixth Circuit from the OPINION and ORDER OF SUMMARY JUDGMENT in favor of Defendants Carlson, said order having been entered on October 5, 1967.

LAWRENCE GUBOW
United States Attorney

By /s/ Joseph F. Deeb, Jr.
JOSEPH F. DEEB, JR.
Assistant U.S. Attorney

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No. 18,432

UNITED STATES OF AMERICA, PLAINTIFF-APPELLANT

v.

ESTATE OF THOMAS S. DONNELLY, SR., OSCAR A. CARLSON and GENEVIEVE S. CARLSON, DEFENDANTS-APPELLEES

ORDER

Appeal from the District Court of the United States for the Eastern District of Michigan, Southern Division.

BEFORE: CELEBREZZE and COMBS, Circuit Judges, and MCALLISTER, Senior Circuit Judge.

The above cause coming on to be heard upon the briefs and record, and the arguments of the parties in open court, and the Court being duly advised,

Now, therefore, it is hereby ORDERED, ADJUDGED and DECREED that the judgment of the District Court be and is hereby affirmed for the reasons set forth in the opinion of Judge Kaess.

ENTERED BY ORDER OF THE COURT

/s/ Carl W. Reuss
Clerk

[Title Omitted in Printing]

AFFIDAVIT OF DEFAULT

STATE OF MICHIGAN)
) SS:
COUNTY OF WAYNE)

JOSEPH F. DEEB, JR. being duly sworn, deposes and says:

1. That he is an Assistant United States Attorney for the Eastern District of Michigan and is an attorney of record for the plaintiff in this cause.
2. That a complaint and summons issued against the above named defendant was/were filed with the Clerk of the Court herein.
3. That as appears from the proof of service on file in this office the defendant was/were served with summons and a copy of plaintiff's complaint on May 17, 1967 by the United States Marshal.
4. That more than twenty days have elapsed since the date on which defendant was/were served with summons and a copy of the complaint, and the defendant has/have not served upon plaintiff or filed with the Court an appearance or answer or other defense to this action as required by the rules of this Court.
5. That this affidavit is executed pursuant to Rule 55 (a) of the Federal Rules of Civil Procedure for the purposes of enabling plaintiff herein to obtain an entry of default against the defendant for failure to answer or otherwise defend this action.

/s/ Joseph F. Deeb, Jr.
JOSEPH F. DEEB, JR.
Assistant United States Attorney

[Jurat Omitted in Printing]

[Title Omitted in Printing]

AFFIDAVIT

Comes now the affiant, A. M. Stoepler, duly appointed District Director of Internal Revenue, Detroit, Michigan, being first duly sworn, deposes and says that as District Director of Internal Revenue, he is charged with responsibility for the administration of the Internal Revenue laws for the Detroit District of Michigan.

Affiant states further that Federal tax liabilities in the total amount of $14,845.92, plus interest as provided by law, are outstanding, past due and presently owing by the defendant, Estate of Thomas S. Donnelly, Sr., and that such tax liabilities are further itemized by a Certificate of Assessments and Payments (Form 4340) attached hereto as Exhibit "A."

Affiant states further that Federal taxes, penalties and interest in the total amount of $14,845.92 were assessed under the applicable provisions of the Internal Revenue Code; and that despite demands for payment thereof, the amount of $14,845.92, plus interest as provided by law, computed to January 3, 1969, in the amount of $21,221.29, or a total unpaid balance of $36,067.21, remains outstanding, due and owing. Interest will accrue at the rate of $2.41 per day thereafter.

/s/ A. M. Stoepler
A. M. STOEPLER
District Director of Internal Revenue

[Jurat Omitted in Printing]

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

Civil No. 29428

UNITED STATES OF AMERICA, PLAINTIFF

vs.

ESTATE OF THOMAS S. DONNELLY, SR., DEFENDANT

ORDER OF DEFAULT

It appearing from the files and records in this cause that the defendant was/were served with summons and a copy of the complaint and that more than twenty days have elapsed from the date of service and that the defendant has/have failed to appear or answer or otherwise to defend this action;

IT IS ORDERED that the default of the defendant ESTATE OF THOMAS S. DONNELLY, SR., for failure to appear or plead is hereby entered in this cause.

Clerk
United States District Court

By: /s/ Lillian Brooks
Deputy Clerk

Dated: March 17, 1969

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Civil No. 29428

UNITED STATES OF AMERICA, PLAINTIFF

vs.

ESTATE OF THOMAS S. DONNELLY, SR., DEFENDANT

JUDGMENT

At a session of said Court held in the Federal Building at Detroit, Michigan on March 17, 1969.

PRESENT: HON. FRED W. KAESS
United States District Judge

It appearing from the records and files in this action that the default of the defendant herein for failure to plead or to otherwise defend this action has heretofore been entered by the Clerk of the Court; that the sum of $36,-247.96 is due plaintiff from said defendant upon the cause of action here involved; that plaintiff's taxable costs amount to $38.00 and it further appearing from the affidavit of Don A. Behringer Deputy United States Marshal that said defendant is are not infant or incompetent person nor in the military service of the United States within the meaning of the Soldiers and Sailors Civil Relief Act of 1949.

IT IS ORDERED AND ADJUDGED that the United States of America plaintiff herein recover from the Estate of Thomas S. Donnelly, Sr., defendant herein the sum of $36,247.96, plus $38.00 costs.

/s/ Fred W. Kaess
United States District Judge

SUPREME COURT OF THE UNITED STATES

No. 104, October Term, 1969

UNITED STATES, PETITIONER

v.

ESTATE OF THOMAS S. DONNELLY, SR., ET AL.

ORDER ALLOWING CERTIORARI. Filed October 13, 1969.

The petition herein for a writ of certiorari to the United States Court of Appeals for the Sixth Circuit is granted, and the case is placed on the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1969 360795 324

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In the Supreme Court of the United States

OCTOBER TERM, 1968

No. ——

UNITED STATES OF AMERICA, PETITIONER

v.

ESTATE OF THOMAS S. DONNELLY, SR., ET AL.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

The Solicitor General, on behalf of the United States, petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Sixth Circuit in this case.

OPINIONS BELOW

The opinion of the district court (Appendix A, *infra*, pp. 13–20) is not officially reported. The court of appeals affirmed without opinion (Appendix B, *infra*, p. 21).

JURISDICTION

The judgment of the court of appeals (Appendix B, *infra*, p. 21) was entered on January 10, 1969. On April 4, 1969, Mr. Justice Stewart extended the time for filing a petition for a writ of certiorari to and including May 10, 1969. The jurisdiction of this Court is conferred by 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether, under this Court's decision in *United States* v. *Union Central Life Ins. Co.*, 368 U.S. 291 (holding that the relevant State statute did not "authorize" the filing of appropriate federal tax lien notices in a State office), the government's tax lien was properly recorded in the district court under Section 3672 of the Internal Revenue Code of 1939, and thus was entitled to priority over the interest of a subsequent purchaser of real property.

STATUTES INVOLVED

Sections 3670, 3671, and 3672(a) of the Internal Revenue Code of 1939, and Act 104, Public Acts of Michigan of 1923 are set forth in Appendix C, *infra*, pp, 22–24.

STATEMENT

The controversy in this case involves conflicting claims to a parcel of land located in Livingston County, Michigan, by the United States, under a federal tax lien, and the respondents, who purchased the property in question from the delinquent taxpayer. The taxpayer, Thomas S. Donnelly, Sr., and his wife had acquired the property in 1949 as tenants by the entireties. In 1950 the Tax Court of the United States determined that Mr. Donnelly was liable for income taxes and penalties totaling approximately $26,000 for the years 1943–1945. Upon assessment of these liabilities, there was created a lien "in favor of the United States upon all property and rights to property, whether real or personal," belonging to the tax-

payer (Section 3670, Internal Revenue Code of 1939; see Section 6321, Internal Revenue Code of 1954).

Section 3672 of the 1939 Code provided that the government's tax lien would be valid against a subsequent purchaser of the taxpayer's property only if notice of the lien had been filed in a State office in which the filing of such notice was authorized by State law, or, if the filing in a State office was not so authorized, in the office of the Clerk of the United States District Court for the district in which the property was located (compare Section 6323, Internal Revenue Code of 1954).

At the time of the assessments against the taxpayer in this case, the Michigan statute purporting to authorize the filing of federal tax lien notices with the county registers of deeds required that the notice of a lien on real property contain "a description of the land upon which a lien is claimed" (Act 104, Public Acts of Michigan of 1923, Appendix C, *infra*, pp. 23–24). Because of this description requirement, which was found to be an impermissible obstacle to the enforcement of federal tax liens, this Court held in *United States* v. *Union Central Life Ins. Co.*, 368 U.S. 291, that the Michigan statute did not "authorize" a filing in a State office within the meaning of Section 3672.

The Treasury Department refused to acquiesce in the Michigan requirement that real property be described in the notice; its practice throughout the country was and is to use a form of notice which does not contain a description of any particular property sub-

ject to the lien.[1] In the present case, notice of the lien was therefore not filed in the office of the Register of Deeds of Livingston County, where the land is located. A standard notice of the lien was filed in November 1950, however, with the Clerk of the United States District Court for the Eastern District of Michigan and, with respect to the taxpayer's personal property, with the Register of Deeds of Wayne County, Michigan, where the taxpayer resided (R. 45a).[1a]

In August 1960, shortly after the taxpayer became sole owner of the Livingston County property upon the death of Mrs. Donnelly, he conveyed the property to respondents, Oscar A. and Genevieve S. Carlson, for the sum of $15,250 (R. 46a). The purchase was consummated after an abstract of title prepared by the Livingston County abstract office disclosed no notices of tax lien affecting real property owned by Mr. Donnelly. The abstract also was examined for respondents by a law firm which passed upon the marketability of their title in the property (R. 46a).

In 1961, the taxpayer executed a second statutory waiver, extending the time for collection of the tax liabilities to December 31, 1966. He died intestate on January 13, 1963, and a petition for the appointment of an administrator was filed by the government with

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[1] On September 10, 1953, subsequent to the filing in this case, the Attorney General of Michigan issued an opinion (No. 1709) holding that the form used by the United States Treasury for filing tax liens did not comply with the provisions of the Michigan statute, in that the form of the notice did not contain a description of the land upon which the lien was claimed. He therefore concluded that it was not entitled to recordation in the office of the register of deeds of any county of Michigan.

[1a] "R" references are to Appendix B to the government's brief in the court below.

the Wayne County Probate Court on December 30, 1966 (R. 46a–47a).

On the same day, the government instituted this action in the district court to foreclose its tax lien on the real property located in Livingston County (R. 47a). Respondents moved for summary judgment, contending that their title to the Livingston County property was entitled to priority over the government's tax lien because the government failed to file notice of the lien with the Register of Deeds in Livingston County pursuant to Michigan law (R. 18a–19a). The government—relying on this Court's holding in *United States* v. *Union Central Life Ins. Co., supra,* that the Michigan statute did not "authorize" a filing in a State office—argued that its notice of lien was properly filed in the federal district court, and therefore that its lien was entitled to priority over the subsequent title of respondents (R. 49a).

The district court, concluding that *Union Central* was distinguishable and, in all events, inapplicable in the circumstances of this case, granted respondents' motion for summary judgment (Appendix A, *infra,* p. 13). The court of appeals affirmed the judgment, by order, "for the reasons set forth in the opinion of [the district court]" (Appendix B, *infra,* p. 21).

REASONS FOR GRANTING THE WRIT

1. The decision below is squarely in conflict with the decision of this Court in *United States* v. *Union Central Life Ins. Co., supra,* which arose under the same federal and Michigan statutes involved in this case.

Union Central involved a notice of tax lien against delinquent Michigan taxpayers filed in a federal dis-

trict court in 1954. Several months later, the taxpayers executed a mortgage on certain real property, which was recorded in the office of the county register of deeds according to Michigan law. The mortgagee subsequently instituted a foreclosure action in a Michigan court, joining the government as a defendant and claiming that its mortgage was entitled to priority because notice of the tax lien had not been filed in the office of the register of deeds where the Michigan statute purported to authorize filing.[2] Consistent with its administrative practice, the government contended that the Michigan statute did not provide authorization for filing in a State office within the contemplation of Section 3672 because it required that the federal notice describe real property on which a lien was asserted. This Court reversed the State judgment that the federal lien was subordinate to the mortgage, holding (368 U.S. at 296):

> The Michigan law authorizing filing only if a description of the property was given placed obstacles to the enforcement of federal tax liens that Congress had not permitted, and consequently no state office was "authorized" for filing within the meaning of the federal statute. It was therefore error for the Michigan courts to fail to give priority to the Government's lien here, notice of which had been filed in the District Court in accordance with federal law.

The present case is identical with *Union Central* in all material respects. Here, as in that case, the same Michigan statute permitted the filing and recordation of a federal tax lien notice only on the condition that

[2] Act 104, Public Acts of Michigan of 1923.

it contain "a description of the land upon which a lien is claimed." Here again the government refused to comply with that condition and filed its notice in the federal district court under the alternative procedure specified by Section 3672(a)(2). The issue in both cases was whether filing in a State office was "authorized" within the meaning of the Internal Revenue Code;[3] in the absence of such authorization it is clear that the government did everything necessary to entitle its lien to priority.

Although it had been assumed that that issue was dispositively settled in *Union Central,* the district court in the present case found a path to a different result, and the court of appeals followed it.

The court first found that *Union Central* was distinguishable because in that case the government had attempted a State filing of its standard notice, which was rejected by the register of deeds, while there was no allegation in this case that a State filing was at-

[3] We agree with the district court's apparent conclusion that the provisions of the 1939 Code apply in this case. The validity of the government's filing in 1950, of course, was governed by the 1939 Code, and in the absence of any statutory limitations period on the effectiveness of the filing (compare Section 6323(g)(3) of the 1954 Code, 26 U.S.C. (Supp. III) 6323(g)(3)), the lien remained in effect according to the filing at the time respondents purchased the property and at the time the government instituted this action. Even if it is assumed that the cognate provision of the 1954 Code (Section 6323(f) (Supp. III), 26 U.S.C. 6323(f)) was intended to make a substantive change in the law—of which we can find no evidence and which respondents apparently do not contend—there is nothing to indicate that the enactment of the 1954 Code was intended to require the government to reexamine all its prior filings and, where necessary, refile the notices in accordance with the new law.

tempted and rejected (App. A, *infra*, p. 18). Both the factual and legal premises of this asserted distinction, however, are erroneous. Although the parties stipulated in *Union Central* that it was the policy of the register of deeds not to accept a lien notice which did not describe real property (see 368 U.S. at 293), we can find nothing in this Court's opinion or in the briefs and record of the case which indicates that an unsuccessful State filing was actually attempted. In any event, an unsuccessful attempt plainly would not have afforded any more effective notice of the lien to the mortgagee there or the purchasers here.

The district court's reliance on the failure to attempt a State filing may rest upon a supposition that the county register of deeds might have *accepted* and recorded a notice if tendered. That possibility is legally irrelevant, however, for, in this posture, the district court's decision purports to overrule *Union Central* rather than distinguish it. Since the Michigan statute—as assessed in *Union Central*—did not "authorize" the filing of notices in a State office, it follows under Section 3672 that the federal court filing satisfied the perfection requirement; Section 3672 requires the government to file either in a State office or in a federal district court, but not in both. It is plainly inconsistent with *Union Central* to refuse to give effect to a properly recorded lien merely because the government failed to take some step which it did not have to take and which was not authorized by the State law.

The district court alternatively held that *Union Central* was inapplicable in the circumstances of this

case because respondents had pu
prior to the decision in *Union C*
there was "every indication" th
ute would be upheld as a valid a
federal tax lien notices (App. A,
though the court did not emplo
it ruled, in effect, that the hold,
was to be applied only to cases
ing interest in the property ar
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Central opinion, however, whic
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infra, pp. 18–20). Al-
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ivate party obtains a
roperty, this Court's
of the government's
to the Michigan re-
nale that respondents
neous rule which had
Circuit before *Union*

[4] See, *e.g.*, *Geiger's Estate* v. *Com*
(C.A. 8*c*), certiorari denied, 382 U.S
Siano, 356 F. 2d 927 (C.A. 2); and
41 T.C. 338, all of which held that *Ja*
U.S. 213 (holding that embezzled f
income to the embezzler) applied to f
prior to the *James* decision.

missioner, 352 F. 2d 221
S. 1012; *United States* v.
d *Nerem* v. *Commissioner*,
ames v. *United States*, 366
funds constituted taxable
funds that were embezzled

Central (see 368 U.S. at 293, 295–296).[5] Indeed, it would place a premium on disorderliness in the administration of federal law if the government were to be penalized, as the district court in effect ruled, for adhering to a position which ultimately was confirmed by this Court.[6]

[5] Moreover, the necessity for Michigan title searchers and lawyers to check the lien indexes in the federal courts, in view of the government's response to the Michigan statute, was well recognized several years before respondents purchased the property in this case. Wright, *Title Examinations in Michigan as Affected by the General Federal Tax Lien*, 51 Mich. L. Rev. 183, 192–198 (1952).

[6] In view of the grounds on which the decision below was based, neither the district court nor the court of appeals found it necessary to reach respondents' additional contentions that the tax lien was defective because (1) the government failed to file notice in the State office after 1956, when the legislature enacted a new filing statute that repealed the invalid requirement for description of real property, and (2) the government failed to file notice of its lien (in the State office) in 1960 upon the death of Mrs. Donnelly when, respondents argued, the property first became subject to the lien. The first contention concedes that the lien was properly filed in the district court in 1950, but assumes that the government has a continuing duty to respond to any change in State law by refiling in a newly-authorized State office all notices which had properly been filed in the district court. In *In re Dartmont Coal Co.*, 46 F. 2d 455 (C.A. 4), the court persuasively reasoned that Congress had not intended to impose such an unusual administrative burden on the government to preserve the effectiveness of its liens. Assuming *arguendo* that the government could not foreclose on the lien until the taxpayer became sole owner of the property at his wife's death, respondents' second contention is completely inconsistent with this Court's decision in *Glass City Bank* v. *United States*, 326 U.S. 265, that the government's tax lien attaches not only to property which the taxpayer owns at the time notice of the lien is filed but also to property subsequently acquired by the taxpayer during the life of the lien. It would

2. The decision below presents a significant administrative problem for the Internal Revenue Service. The rationale adopted by the district court is applicable not only to notices of liens filed in the federal district court in Michigan prior to August 11, 1956 (the effective date of the repeal of the Michigan statute, see 368 U.S. at 292–293) but also to federally filed notices in several other States. The Internal Revenue Service advises that the adoption of the 1962 version of the Uniform Federal Tax Lien Registration Act in Pennsylvania, Massachusetts, and Wisconsin[7] resulted in federal court filings in those States that might be invalidated under the district court's reasoning, which presumably would be applicable to the 1954 Code as well as the 1939 Code; notices filed in Illinois between 1966 and 1967 also may be affected. In sum, the validity of approximately 40,000 notices filed in the district courts in five States has been clouded by the decision in the instant case, with resulting uncertainty of land titles for the public as well as injury to the government.

CONCLUSION

Because the court of appeals has decided this important federal question in a way in direct conflict

be extraordinarily difficult for the government to monitor the affairs of every delinquent taxpayer and file successive notices of lien every time a taxpayer acquired a significant piece of property on which the government might be required to execute in order to liquidate the taxpayer's liability.

[7] The 1962 Lien Act is still in effect in Massachusetts and was in effect for two years in both Pennsylvania and Wisconsin.

with a prior decision of this Court, the petition for a writ of certiorari should be granted.

Respectfully submitted.

ERWIN N. GRISWOLD,
Solictor General.
JOHNNIE M. WALTERS,
Assistant Attorney General.
JOSEPH J. CONNOLLY,
Assistant to the Solicitor General.
CROMBIE J. D. GARRETT,
KARL SCHMEIDLER,
Attorneys.

MAY 1969.

APPENDIX A

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF MICHIGAN

SOUTHERN DIVISION

Civil No. 29428

UNITED STATES OF AMERICA, PLAINTIFF

v.

ESTATE OF THOMAS S. DONNELLY, SR., OSCAR A. CARLSON, AND GENEVIEVE S. CARLSON, DEFENDANTS

OPINION AND ORDER

(Filed October 6, 1967)

Appearances:

Mr. Lawrence Gubow, United States Attorney, Attn. Joseph F. Deeb, Jr., 811 Federal Building, Detroit, Michigan 48226.

Daniel N. Pevos, Pevos & Pevos, 1041 Penobscot Building, Detroit, Michigan 48226.

Facts:

This is a suit in equity filed under Sections 7401 and 7403 of the Internal Revenue Code of 1954. The bill of complaint seeks to foreclose certain real property located in Livingston County, Michigan, arising out of a deficiency assessment of income tax against Thomas S. Donnelly, Sr., and to give priority over the rights of defendants Oscar A. Carlson and Genevieve S. Carlson, who are subsequent purchasers of the property in good faith and for value.

The facts are not in dispute and are as follows:

On April 16, 1949, Thomas S. Donnelly, Sr. and Jessie C. Donnelly, his wife, acquired by warranty deed certain property located in Livingston County, Michigan. Said deed was properly recorded in Livingston County. On June 23, 1950, the Tax Court of the United States determined that Thomas S. Donnelly, Sr., individually, was liable for income taxes and penalties for the years 1943, 1944, 1945, in the amount of about $26,000.00. Assessments of the taxes were made and notice of the tax liens was filed with the *Wayne* County Register of Deeds on November 28, 1950. On November 29, 1950 a notice of tax liens was also filed by Internal Revenue Service with the Clerk of the United States District Court for the Eastern District of Michigan, Southern Division, at Detroit, Michigan.

On February 14, 1956, Donnelly executed a statutory waiver extending the time of collection of the tax liabilities for a period of five years.

August 11, 1956, the Uniform Federal Tax Lien Registration Act became effective in Michigan.[1] Subsequently a "Certificate of Non-attachment of Federal Tax Lien", referring to separate property of Donnelly located in Detroit, Michigan, was filed in September, 1956, and was attached to those notices previously filed with Wayne County Register of Deeds and Clerk of United States District Court in 1950. Jessie C. Donnelly, wife of the taxpayer, died on May 28, 1960

[1] The "Uniform Federal Tax Lien Registration Act" [Act 107, P. A. 1956 effective August 11, 1956; C.L. 1948, § 211.661 et seq.] repealed the Act 104 of Public Acts of 1923. The Act eliminated the requirement of a description of property and was in effect for almost six years prior to the purchase by defendants Carlson. It was not until after the purchase by defendants that notice of any lien was filed with the Register of Deeds for Livingston County pursuant to Act 107.

and her death was recorded with the Livingston County Register of Deeds. On August 6, 1960, after negotiation through a real estate broker in Brighton, Michigan, defendants Oscar A. Carlson and Genevieve S. Carlson purchased the property situated in Livingston County by warranty deed. The defendants Carlson paid $15,250.00 for the property.[2] The purchase was consummated after an abstract of title was prepared by the Livingston County abstract office, Howell, Michigan, disclosing no notices of tax lien affecting real property owned by Donnelly. The abstract was examined for defendants Carlson by a law firm who passed upon the marketability of defendants' title in the property, in accordance with a written opinion dated July 22, 1960.

On March 20, 1961, the Internal Revenue Service filed a notice of tax liens with the Register of Deeds of Livingston County, in accordance with Act 107 of Public Acts of 1956, and on April 17, 1961, a second statutory waiver extending the time for payment to December 31, 1966, was signed by Donnelly.

Donnelly died intestate on January 13, 1963, and a petition for appointment of administrator was filed by plaintiff with the Wayne County Probate Court (No. 564-956) on December 30, 1966.[3]

---

[2] Since the purchase by Carlson and prior to the commencement of suit, the defendants have expended over $25,000 on improvements to the property.

[3] The Probate Code provides that "if the widow, husband, or next of kin or grantee shall neglect for 30 days after the death of the intestate to apply for administration, or to request that administration be granted to some other person, one or more of the principal creditors may file such petition, or the same may be filed by any person in whose favor a right or cause of action exists which cannot be enforced without such administration or by the public administrator of the proper county." C. L. 1948, § 702.51.

Suit to foreclose the tax lien was commenced by the filing of a complaint with this court on December 30, 1966, with service being made upon the defendants Carlson on May 4, 1967.

The defendants Carlson move for summary judgment in their favor, urging upon the court the failure of the government to comply with the Michigan statute regarding notice of tax liens, thus entitling them to the protection afforded bona fide purchasers in good faith without notice.

The position of the government is that notice was given constructively to the defendants by the Internal Revenue Service and such right to foreclose may not be lost through laches.

Opinion

Rule 56 of Federal Rules of Civil Procedure provides for this court to grant a summary judgment where there is no issue as to any material fact and the moving party is entitled to judgment as a matter of law.

The controlling issue is whether a tax lien of the United States is valid as against a subsequent purchaser of real estate, who takes title without actual knowledge of an existing lien and where the notice of the lien is filed only with the Clerk of this court and not with the Register of Deeds in the county where the property is located.

Under the provisions of Section 3672 of the Internal Revenue Code of 1939, it is provided that such liens shall not be valid as against any purchaser until notice thereof has been filed in accordance with the law of the state in which the property subject to the lien is

situated, whenever the state has by law provided for the filing of such notice.[4]

By Act 104 of the Public Acts of the State of Michigan for the year 1923 (C.L. 1948, § 211.521 et seq.), the State of Michigan provided for the filing of notices of federal tax liens in the office of the Register of Deeds, pursuant to Section 3672 of the Internal Revenue Code of 1939, and thereby provided that the notice of lien should set forth, among other things, a description of the land upon which a lien is claimed.

The purpose of filing notice is to avoid the harsh effect of enforcing a secret tax lien upon innocent purchaser. *U.S. v. Gilbert Associates, Inc.*, 345 U.S. 361 (1953); *U.S. v. Hodes*, 355 F. 2d 746 (1966), cert. granted, 384 U.S. 968. That the defendants were bona fide purchasers who acted in good faith and for value is not disputed. Whether they had notice or should have had notice is disputed.

---

[4] "§ 3672. Validity against mortgagees, pledgees, purchasers, and judgment creditors.

(a) *Invalidity of lien without notice.* Such lien shall not be valid as against any mortgagee, pledgee, purchaser, or judgment creditor until notice thereof has been filed by the collector;

(1) *Under State or Territorial laws.* In the office in which the filing of such notice is authorized by the law of the State or Territory in which the property subject to the lien is situated, whenever the State or Territory has by law authorized the filing of such notice in an office within the State or Territory; or

(2) *With clerk of district court.* In the office of the clerk of the United States district court for the judicial district in which the property subject to the lien is situated, whenever the State or Territory has not by law authorized the filing of such notice in an office within the State or Territory; or

(3) *With clerk of District Court of the United States for the District of Columbia.* In the office of the clerk of the District Court of the United States for the District of Columbia, if the property subject to the lien is situated in the District of Columbia."

The government asks this court to adhere to their reasoning that they complied with the notice provisions as set forth in § 3672 by the filing with the Clerk of this court. They contend that since *U.S. v. Union Central Life Ins. Co.*, 368 U.S. 291 (1961), such state law had never existed and, therefore, they complied with § 3672 of the Code. Their position, apparently sound on its face, is faulty for two reasons.

First, the *Union Central* facts are clearly distinguished from this case in that an attempt had been made in the *Union Central* case to file notice with the Register of Deeds in 1954, which had been refused by the Register of Deeds pursuant to a Michigan Attorney General opinion rendered in 1953, which ruled that federal tax lien notices not containing a description of the property are not entitled to be recorded. In the instant case, there had been no attempt to file with the Register of Deeds. There is no indication that the Register would refuse in 1950, in light of the fact that the Register of Deeds for Wayne County accepted notice and the opinion of the Attorney General for Michigan was not rendered until three years later.

Second, this court views the acts of the parties in relation to the laws in existence at that time. Thus, we have a Michigan statute requiring notice of any federal tax lien to be filed, with a description of the property, in the county where the property is located. This same statute was later declared not to be the law by the Supreme Court of the United States. However, even where a statute is unconstitutional and hence declared void as of the beginning, the Supreme Court has held that its existence before it has been so declared is not to be ignored. *NLRB* v. *Rockaway News Supply Co.*, 345 U.S. 71 (1953). This court thinks that the principle stated by Chief Justice

Hughes for a unanimous court in *Chicot County Drainage District* v. *Baxter State Bank,* 308 U.S. 371 (1939), is applicable to this case.

> "The courts below have proceeded on the theory that the Act of Congress, having been found to be unconstitutional, was not a law; that it was inoperative, conferring no rights and imposing no duties, and hence affording no basis for the challenged decree. *Norton v. Shelby County,* 118 U.S. 425, 442; *Chicago, I. & L. Ry. Co. v. Hackett,* 228 U.S. 559, 566. It is quite clear, however, that such broad statements as to the effect of a determination of unconstitutionality must be taken with qualifications. The actual existence of a statute, prior to such a determination, is an operative fact and may have consequences which cannot justly be ignored. The past cannot always be erased by a new judicial declaration. The effect of the subsequent ruling as to invalidity may have to be considered in various aspects,—with respect to particular relations, individual and corporate, and particular conduct, private and official.
>
> "Questions of rights claimed to have become vested, of status, of prior determinations deemed to have finality and acted upon accordingly, of public policy in the light of the nature both of the statute and of its previous application, demand examination." (308 U.S. 374.)

An examination of the facts will disclose that the Michigan statute had been approved by this court and the Court of Appeals. See *U.S.* v. *Maniaci,* 36 F. Supp. 293 (1933) and *Youngblood* v. *U.S.,* 141 F. 2d 912 (1944). And yet in 1950, when notice, with a description, was to be filed in Livingston County, the government failed to comply. Reasons for not filing the notice were not given, except to say that in the *Union Central* case the Supreme Court held that no such state law could exist. That decision, however, had not been rendered until 1961, some 16 months after the pur-

chase by the defendants. Prior to that decision, there was no indication that such statute would be declared per se illegal. On the contrary, every indication was that the statute would be upheld.

Thus, in the light of the foregoing facts and reasons, this court cannot but hold that the Carlsons were bona fide purchasers in good faith without notice.

This Court does agree with the government on the question of laches, that such right may not be lost through laches. *U.S.* v. *Mr. Hamburg Bronx Corp.*, 228 F. Supp. 115 (1964); *U.S.* v. *Summerlin*, 310 U.S. 414 (1940). And the United States may proceed to recover back taxes from the Estate of Donnelly.

Therefore, it is ordered summary judgment in favor of the defendants Carlson should be and hereby is granted. Plaintiff, United States, has no interest, lien, or claim in the property described in the complaint.

FRED W. KAESS,
United States District Judge.

APPENDIX B

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

No. 18432

UNITED STATES OF AMERICA, PLAINTIFF-APPELLANT,

v.

ESTATE OF THOMAS S. DONNELLY, SR., OSCAR A. CARLSON AND GENEVIEVE S. CARLSON, DEFENDANTS-APPELLEES.

Appeal from the District Court of the United States for the Eastern District of Michigan, Southern Division.

ORDER

Before: CELEBREZZE and COMBS, Circuit Judges, and MCALLISTER, Senior Circuit Judge.

The above cause coming on to be heard upon the briefs and record, and the arguments of the parties in open court, and the Court being duly advised,

Now, therefore, it is hereby Ordered, Adjudged and Decreed that the judgment of the District Court be and is hereby affirmed for the reasons set forth in the opinion of Judge Kaess.

Entered by Order of the Court.

CARL W. REUSS, *Clerk.*

APPENDIX C

Internal Revenue Code of 1939:

SEC. 3670. PROPERTY SUBJECT TO LIEN.

If any person liable to pay any tax neglects or refuses to pay the same after demand, the amount (including any interest, penalty, additional amount, or addition to such tax, together with any costs that may accrue in addition thereto) shall be a lien in favor of the United States upon all property and rights to property, whether real or personal, belonging to such person.

[26 U.S.C. (1952 ed.) 3670.]

SEC. 3671. PERIOD OF LIEN.

Unless another date is specifically fixed by law, the lien shall arise at the time the assessment list was received by the collector and shall continue until the liability for such amount is satisfied or becomes unenforceable by reason of lapse of time.

[26 U.S.C. (1952 ed.) 3671.]

Sec. 3672 [as amended by Sec. 401 of the Revenue Act of 1939, c. 247, 53 Stat. 882, and Sec. 505 of the Revenue Act of 1942, c. 619, 56 Stat. 957] VALIDITY AGAINST MORTGAGEES, PLEDGEES, PURCHASERS, AND JUDGMENT CREDITORS.

(a) *Invalidity of Lien Without Notice*—Such lien shall not be valid as against any mortgagee, pledgee, purchaser, or judgment creditor until notice thereof has been filed by the collector—

(1) *Under state or territorial laws*—In the office in which the filing of such notice is authorized by the law of the State or Territory in which the property subject to the lien is situated, whenever the State or Territory has by law authorized the filing of such notice in an office within the State or Territory; or

(2) *With clerk of district court*—In the office of the clerk of the United States district court for the judicial district in which the property subject to the lien is situated, whenever the State or Territory has not by law authorized the filing of such notice in an office within the State or Territory; or

* * * * *

[26 U.S.C. (1952 ed.) 3672.]

Michigan Public Acts, 1923, No. 104, as amended by Michigan Public Acts, 1925, No. 13:

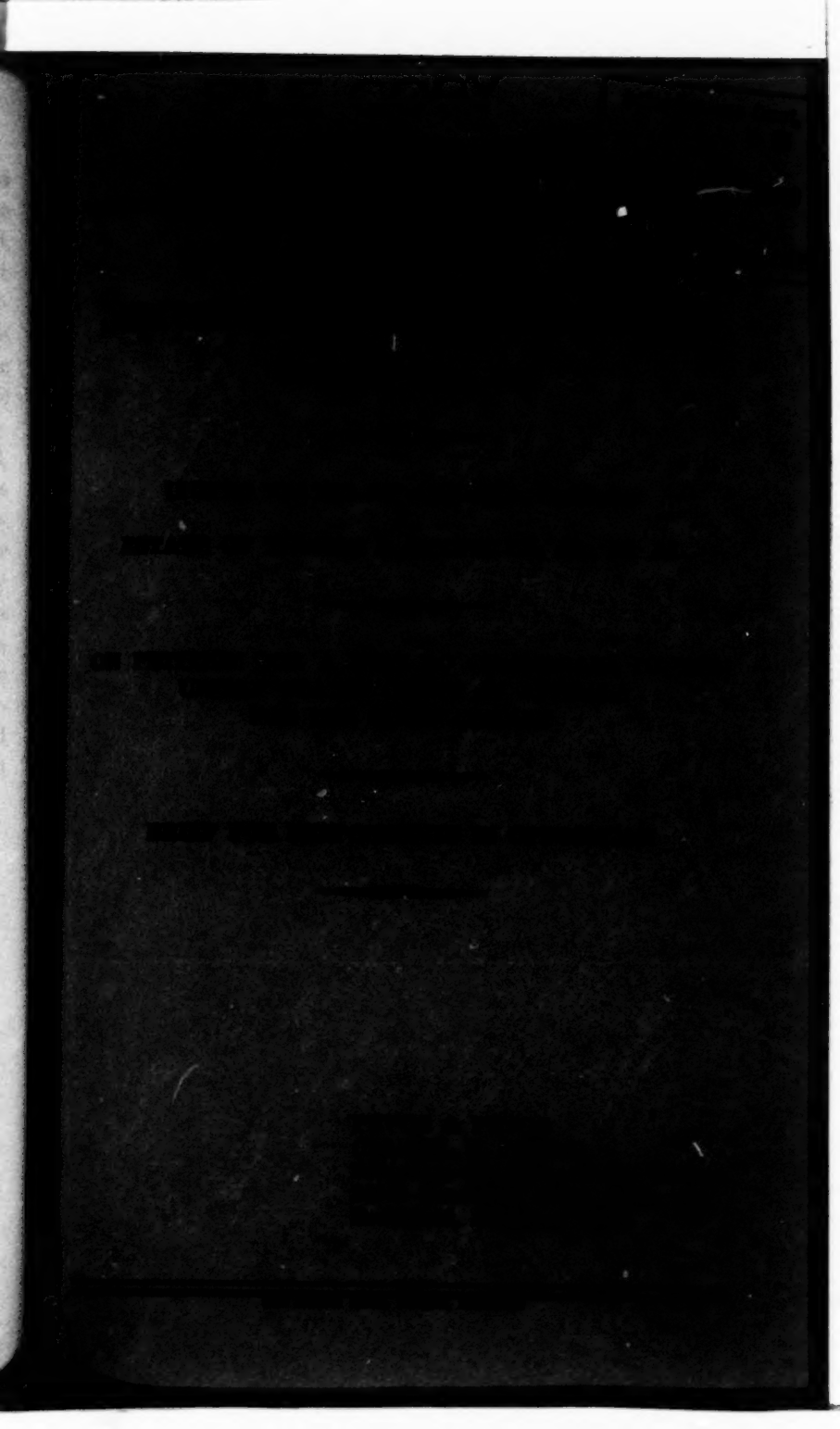
An Act to provide for and to authorize the filing of notices of federal tax liens by the United States of America in the office of the register of deeds in the various counties of this state, pursuant to section three thousand one hundred eighty-six of the revised statutes of the United States.

The People of the State of Michigan enact:

Section 1. That whenever the collector of internal revenue for any district in the United States, or any tax collecting officers of the United States having charge of the collection of any tax payable to the

United States, shall desire to acquire a lien in favor of the United States for any tax payable to the United States against any property real or personal, within the state of Michigan pursuant to section three thousand one hundred eighty-six of the revised statutes of the United States, he is hereby authorized to file a notice of lien, setting forth the name and the residence or business address of such taxpayer, the nature and the amount of such assessment, and a description of the land upon which a lien is claimed, in the office of the register of deeds in and for the county or counties in Michigan in which such property subject to such lien is situated; and such register of deeds shall, upon receiving a filing fee of fifty cents for such notice, file and index the same in a separate book, entitled "Record of the United States Tax Liens", indexing the same according to the name of such taxpayer as stated in the notice; all in pursuance of said section three thousand one hundred and eighty-six of the revised statutes of the United States.

U.S. GOVERNMENT PRINTING OFFICE: 1969



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No. 1380

IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

UNITED STATES OF AMERICA, Petitioner
V.
ESTATE OF THOMAS S. DONNELLY, SR., ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR RESPONDENTS IN OPPOSITION

Pevos & Pevos (Daniel N. Pevos), on behalf of respondents, Oscar A. Carlson and Genevieve S. Carlson, respectfully oppose the petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Sixth Circuit in this case.

QUESTIONS PRESENTED

I.

Whether respondent Carlson, as an innocent purchaser in August 1960 of land in Livingston County, Michigan,

was protected by the tax lien filing requirements of the Internal Revenue Code where notices of tax liens against Donnelly were filed in 1950 only in the office of the Register of Deeds of Wayne County where Donnelly resided and in the office of the Clerk of the local United States District Court, but not with the Register of Deeds of Livingston County, although in 1950 a notice of such tax liens would have also been accepted for filing by Livingston County without the necessity of a legal description.

II.

Whether Carlson, as an innocent purchaser in August 1960, was entitled to the protection of Section 6323(a) of the Internal Revenue Code of 1954 when tax liens assessed in 1950 against Donnelly, individually, did not attach to land in Livingston County acquired in 1949 by Donnelly and his wife as tenants by the entireties until Donnelly's wife died in May 1960, when pursuant to said Section 6323(a) Michigan had in 1956 adopted the Uniform Federal Tax Lien Registration Act and the Government did not file a tax lien notice with the Livingston County Register of Deeds until April 1961 (eight months after Carlson's purchase and eight months before *United States* v. *Union Central Life Ins. Co.*, 368 U.S. 291, decided December 18, 1961).

STATUTES INVOLVED

In addition to the statutes cited by petitioner, respondents cite Section 6323(a) of the Internal Revenue Code of 1954 which is set forth in Appendix A, *infra*, page 11.

STATEMENT

Petitioner filed a Complaint in the District Court on December 30, 1966 to foreclose an income tax lien assessed in 1950 against Thomas S. Donnelly, Sr. who died in January 1963. Respondents Carlson, whom petitioner concedes

were purchasers in good faith and for value, acquired certain real property in Livingston County, Michigan, from Donnelly in August 1960, sixteen months before the decision in *United States* v. *Union Central Life Ins. Co., supra.*

At the time of the assessments against Donnelly, the Michigan statute providing for local filing of Federal tax lien notices with county Registers of Deeds had been in effect for 27 years. The portion of the statute providing for a description of the land upon which a lien is claimed was not enforced by Registers of Deeds in most counties in Michigan until after a Michigan Attorney General's Opinion issued on September 10, 1953 (No. 1709) and the Government was filing locally under the Michigan statute. In Wayne County, Michigan, where Donnelly resided, the Register of Deeds accepted a standard notice of lien on November 28, 1950 and there is nothing in the Complaint or in the record in the District Court (R. 45a, cited by petitioner on page 4 of its Petition) to indicate that said notice was limited to Donnelly's personal property.

Although petitioner claims that the Treasury Department refused to acquiesce in the Michigan requirement that real property be described in the notice, the Government did acquiesce when it declined to take an appeal of the decision of the United States Court of Appeals for the Sixth Circuit in *Youngblood* v. *United States,* 141 F.2d 912, which in 1944 had upheld the Michigan filing requirements (16 years before respondents Carlson acquired the property involved herein).

REASONS FOR DENYING WRIT

I. The decision below does not conflict with the decision of this Court in *United States* v. *Union Central Life Ins Co.,* supra.

Union Central involved a notice of tax lien filed in the

District Court in 1954 — several months after the September 10, 1953 Michigan Attorney General's Opinion. In *Union Central* the Government stressed the existence of the 1953 Attorney General's Opinion and the parties stipulated "that from the time of that ruling, up to 1956, 'it was the policy of the office of the Register of Deeds for said County of Oakland not to accept for recording notices of Federal tax liens which did not contain a legal description of any land'." (368 U.S. at 293).

The present case is not identical with *Union Central* since the tax lien arose in 1950 — three years before the Attorney General's Opinion. Notice of said lien was accepted on November 28, 1950 by the Register of Deeds in Wayne County, Michigan, where Donnelly resided. The Government waited until March 20, 1961 (R. 4a) to file a notice in Livingston County, Michigan, where the land is located, although it was conceded that in 1950 the notice would have been accepted by the Livingston County Register of Deeds (R. 39a).*

The Complaint also indicates that a similar notice was filed on March 16, 1961 with the Register of Deeds of Genesee County (R. 4a.). Livingston, Genesee and Wayne Counties are in the same federal judicial district. If, as petitioner contends, the filing with the Clerk of the District Court at Detroit on November 29, 1950 was sufficient to perfect the tax lien on all lands owned or subsequently acquired by Donnelly within that judicial district, then there would have been no reason for Internal Revenue

*Although Donnelly did not acquire the property until his wife's death in May 1960, in 1950 the Government, in anticipation of Donnelly's possible future ownership, could have tendered and the Livingston County Register of Deeds would have accepted a standard notice of lien without inquiring into whether Donnelly actually owned property in that County at the time.

Service to file notices in Livingston and Genesee Counties in March 1961. The reason for the 1961 filings was, of course, that the Government had at that time no more indication than did respondents Carlson, the Abstract Company which prepared the Carlsons' abstract of title, or the attorneys who reviewed the abstract, that the 1923 Michigan statute would subsequently be declared by this Court to be invalid with respect to filings after the Michigan Attorney General's Opinion of September 10, 1953.

II. In the trial court and in their brief in the Court of Appeals respondents contended that petitioner failed to file a notice of its tax lien with the Livingston County Register of Deeds after Donnelly's wife died on May 28, 1960. In August 1956 Michigan adopted the Uniform Federal Tax Lien Registration Act (Act 107, P.A. 1956; C.L. 1948 § 211.661 et seq.) the validity of which has never been questioned by petitioner. At no time have respondents Carlson conceded that the lien notice filed in the District Court in 1950 was properly filed. Respondents' position with respect to the failure of the Government to perfect its tax lien in Livingston County after the death of Donnelly's wife (before respondents acquired the real property from him) is based on the clear wording of Section 6323(a) of the Internal Revenue Code of 1954 which was in effect in 1960. The provisions of the 1954 Code, and not those of the 1939 Code, governed the statutory waiver executed by Donnelly in February 1956 extending the time of collection of his tax liabilities for a period of five years. The Government from that time forward was proceeding under the 1954 Code.

It is inconceivable that petitioner should now dispute respondents' contention that the Livingston County prop-

erty was not subject to the tax lien until Mrs. Donnelly's death in May 1960. The non-attachment of the lien to said property was conceded by petitioner in argument before the Court of Appeals. Michigan adheres to the common-law doctrine that in estates by the entireties neither the husband nor the wife alone have an interest capable of being sold, mortgaged, executed upon, taken by a trustee in bankruptcy, or levied upon for the tax liability of one of the spouses. See *United States* v. *Nathanson,* D. C., E. D. Mich., S.D., 60 F.Supp.193 (1945).

The Court of Appeals for the Eighth Circuit in the case of *United States* v. *Hutcherson,* 188 F.2d 326 (1951) in affirming a District Court in Missouri where the common-law tenancy by the entireties is identical to that of Michigan said:

> "Under Missouri law the individual interest of the husband or wife in an estate by the entirety is, like the rainbow in the sky or the morning fog rising from the valley, not such an estate as may be subjected to the grasp of an attaching creditor or which will permit the adherence thereto of a tax lien. We are not at liberty to change the nature of either. The definition of the nature of the Missouri estate by the Missouri courts has become the 'inveterate policy' of the state. *** It is applied by the state courts in determining whether liens arising under state law may attach to the individual interest of either spouse. Uniformly it is held that such liens may not. Not because State or Federal liens are withheld from this particular 'right to property', but because *the interest of one spouse in the estate by the entirety in Missouri is not a right to property or property in any sense.* We may not change the nature of the estate or the interest of one spouse therein for purposes of federal taxation.

> "It is argued that the United States only sought to hold a lien against the husband's possible future interest and that the trial court had no right to defeat that right. *The answer is that the husband had no separate interest to which the lien could* attach ***". (188 F.2d at 331).

The Court of Appeals for the Fifth Circuit reviewing Florida law and citing the *Hutcherson* case, *supra*, as authority held in the case of *United States* v. *American National Bank of Jacksonville*, 255 F.2d 504 (1958), at 507:

> "The husband *** did not have an interest in the subject property during his wife's lifetime to which a lien for Federal taxes, owed by him but not by her, could attach. Upon (the wife's) death the tax lien attached to the property as of the date of her death."

The annotation in 75 A.L.R. 2d 1176 indicates that the courts of Florida, Missouri and Michigan have uniformly rejected attempts of creditors of one spouse, including the Government, to levy upon or to assert any interest in entireties property.

Respondents have never disputed this Court's decision in *Glass City Bank* v. *United States*, 326 U.S. 265, as to the attachment of a federal tax lien to after-acquired property. They concede that the 1950 tax lien *attached* to the Livingston County property *when it was acquired by Donnelly* but it is their contention that the property was not acquired by Donnelly until his wife died in May 1960. The tax lien attached in May 1960, but it was *not perfected* as against purchasers, mortgagees, etc. of Donnelly's Livingston County property under Section 6323(a) of the Internal Revenue Code of 1954, then in force, *until eight months after respondents' purchase* when in March 1961

notice of the lien was first filed with the Livingston County Register of Deeds. Section 6323(a) provided for the proper filing of notice in the office in which property subject to a lien is situated "*whenever* the State or Territory has by law *designated* an office within the State or Territory for the filing of such notice". It is entirely consistent with orderly administration of the collection of revenues to expect the Internal Revenue Service to *perfect a tax lien against after-acquired* property by requiring a filing in a state or county where a delinquent taxpayer does not reside and at some time subsequent to the filing of tax lien notice in his "home" state or county he acquires property for the first time.

The responsibility of the Government to prevent innocent purchasers, etc. from being subjected to the "secret" Federal tax liens is manifested in the filing requirements of the Internal Revenue law enacted by Congress in various and increasingly protective forms since 1913. Although the 1927 West Virginia legislature may have infringed upon Congressional intent by providing for re-filing or existing notices within a four-month period under penalty of declaring same void, the case of *In re Dartmont Coal Co.*, 46 F.2d 455 (C.A. 4) should not be construed as authority for the Government to avoid its obligation to file locally in a county where the delinquent taxpayer does not reside but at some time subsequent to the creation of the Federal tax lien (and after a state has provided for local filing) he acquires real property. Congressional intent is further indicated in the 1966 amendments to Section 6323 of the Internal Revenue Code of 1954 which, among other things, require the re-filing of notices whenever tax liens are extended beyond their usual six-year limitation period by the execution of statutory waivers.

III. It is inconceivable that the decision of the District Judge in this case, which prevented petitioner under a most singular set of circumstances from imposing a gross injustice upon respondents Carlson, should be asserted as adverse precedent with respect to lien notices in four other States, which, *after Union Central, supra,* adopted versions of the Uniform Federal Tax Lien Registration Act which are in no way similar to the 1923 Michigan statute.

The Michigan statute reviewed by this Court in *Union Central* was repealed 13 years ago and it is not likely that the decision of the District Court will affect other Michigan land titles. This Court, if it were to grant certiorari in this case, would not be in a position to render a decision which would determine the validity of the post-*Union Central* filing statutes referred to by petitioner. If anything, land titles in the States involved would become more clouded.

Respondents Carlson pray that this Court choose between petitioner who, through its agents, exhibited a great degree of laxity in collecting taxes owed by Donnelly, and respondents Carlson who, as innocent purchasers of real property in reliance upon Michigan law as known for almost 40 years, find their ownership jeopardized by the tax liabilities of a virtual stranger long deceased. The decision of the District Court, and the affirmance by the Court of Appeals, are based upon sound application of legal principles and a proper regard for justice and equity. "Even the most solicitous regard for the protection of Federal revenues does not counsel a policy of tax collection at the expense of non-liable third parties." *U.S.* v. *Lebanon Woolen Mills Corp.*, D. C., N. H., 241 F.Supp 393 (1964), at 399.

CONCLUSION

For the foregoing reasons, the petition for writ of certiorari should be denied.

Dated: June 1969.

Respectfully submitted,
PEVOS & PEVOS
(Daniel N. Pevos)
Attorneys for Respondents Carlson

APPENDIX A

Internal Revenue Code of 1954:

SEC. 6323. VALIDITY AGAINST MORTGAGEES, PLEDGEES, PURCHASERS, AND JUDGMENT CREDITORS.

(a) Invalidity of Lien Without Notice. — Except as otherwise provided in subsections (c) and (d), the lien imposed by section 6321 shall not be valid as against any mortgagee, pledgee, purchaser, or judgment creditor until notice thereof has been filed by the Secretary or his delegate—

(1) Under state or territorial laws. — In the office designated by the law of the State or Territory in which the property subject to the lien is situated, whenever the State or Territory has by law designated an office within the State or Territory for the filing of such notice; or

(2) With clerk of district court. — In the office of the clerk of the United States district court for the judicial district in which the property subject to the lien is situated, whenever the State or Territory has not by law designated an office within the State or Territory for the filing of such notice; or

* * * * * * *

BRIEF FOR THE UNITED STATES

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In the Supreme Court of the United States

OCTOBER TERM, 1969

No. 104

UNITED STATES OF AMERICA, PETITIONER

v.

ESTATE OF THOMAS S. DONNELLY, SR., ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The opinion of the district court (A.51–57) is reported at 295 F. Supp. 557. The court of appeals' order affirming the judgment of the district court (A.58) is reported at 406 F. 2d 1065.

JURISDICTION

The judgment of the court of appeals (A.58) was entered on January 10, 1969. On April 4, 1969, Mr. Justice Stewart extended the time for filing a petition for a writ of certiorari to and including May 10, 1969. The petition for a writ of certiorari was filed on May 10, 1969, and was granted on October 13, 1969. (A.63). The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether, under this Court's decision in *United States* v. *Union Central Life Ins. Co.*, 368 U.S. 291 (holding that the relevant State statute did not "authorize" the filing of appropriate federal tax lien notices in a State office), the government's tax lien was properly filed in the federal district court under Section 3672(a) of the Internal Revenue Code of 1939, and thus was entitled to priority over the interest of a subsequent purchaser of real property.

STATUTES INVOLVED

Sections 3670, 3671 and 3672(a) of the Internal Revenue Code of 1939, and Act 104, Public Acts of Michigan of 1923, are set forth in Appendix A, *infra*, pp. 17–19.

STATEMENT

In 1950, the Tax Court of the United States determined that the taxpayer, Thomas S. Donnelly, Sr., of Detroit, Michigan, was liable for income taxes and penalties totaling approximately $26,000 for the years 1943–1945. Upon assessment of these liabilities, there was created a lien "in favor of the United States upon all property and rights to property, whether real or personal," belonging to the taxpayer (Section 3670, Internal Revenue Code of 1939; see Section 6321, Internal Revenue Code of 1954).

Section 3672 of the 1939 Code provided that the government's tax lien would be valid against a subsequent purchaser of the taxpayer's property only if notice of the lien had been filed in a State office in which the filing of such notice was authorized by State

law, or, if filing in a State office was not so authorized, in the office of the Clerk of the United States District Court for the district in which the property was located (compare Section 6323, Internal Revenue Code of 1954).

At the time of the assessments against the taxpayer in this case, the Michigan statute purporting to authorize the filing of federal tax lien notices with the county registers of deeds required that the notice of a lien on real property contain "a description of the land upon which a lien is claimed" (Act 104, Public Acts of Michigan of 1923, Appendix A, *infra*, pp. 18–19). Because of this description requirement, which was found to be an impermissible obstacle to the enforcement of federal tax liens, this Court ultimately held in *United States* v. *Union Central Life Ins. Co.*, 368 U.S. 291, that the Michigan statute did not "authorize" a filing in a State office within the meaning of Section 3672.

The Treasury Department refused to acquiesce in the Michigan requirement that real property be described in the notice; its practice throughout the country was and is to use a form of notice which does not contain a description of any particular property subject to the lien.[1] In the present case, notice of the lien

[1] On September 10, 1953, subsequent to the filing in this case, the Attorney General of Michigan issued an opinion (No. 1709), Appendix B, *infra*, holding that the form used by the United States Treasury for filing tax liens did not comply with the provisions of the Michigan statute in that the form of the notice did not contain a description of the land upon which the lien was claimed. He therefore concluded that it was not entitled to recordation in the office of the register of deeds of any county of Michigan.

was therefore not filed in the office of the Register of Deeds of Livingston County, where the land in dispute is situated. A standard notice of the lien was filed, however, in November, 1950 with the Clerk of the United States District Court for the Eastern District of Michigan; another notice, with respect to the taxpayer's personal property, was filed with the Register of Deeds of Wayne County, Michigan, where the taxpayer resided (A. 52).

The taxpayer and his wife had acquired the Livingston County property in 1949 as tenants by the entireties. In August, 1960, shortly after the taxpayer became sole owner of the property upon the death of Mrs. Donnelly, he conveyed it to respondents, Oscar A. and Genevieve S. Carlson, for the sum of $15,250 (A. 52).[18] The purchase was consummated after an abstract of title prepared by the Livingston County abstract office disclosed no notices of tax lien on file with the Register of Deeds affecting real property owned by Mr. Donnelly (A. 30). The abstract, which explicitly disclaimed any examination of federal court records also was examined for respondents by a law firm which passed upon the marketability of their title to the property (*ibid.*).

In 1961, the taxpayer executed a second statutory waiver, extending the time for collection of the tax liabilities to December 31, 1966. He died intestate on January 13, 1963, and a petition for the appointment of an administrator was filed by the government with

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[18] Respondents alleged, and the district court noted, that they had expended more than $25,000 on improvements and repairs to the property (A. 13, 52 n. 2).

the Wayne County Probate Court on December 30, 1966 (A. 53).

On the same day, the government instituted this action in the district court to foreclose its tax lien on the real property located in Livingston County (A. 3–8). Respondents moved for summary judgment, contending that their title to the Livingston County property was entitled to priority over the government's tax lien because the government had failed to file notice of the lien with the Register of Deeds in Livingston County (A. 22–24). The government—relying on this Court's holding in *United States* v. *Union Central Life Ins. Co., supra,* that the Michigan statute did not "authorize" a filing in a State office—argued that its notice of lien was properly filed in the federal district court, and that its lien was therefore entitled to priority over the subsequent title of respondents (A. 55).

The district court concluded that *Union Central* was distinguishable and, in all events, inapplicable in the circumstances of this case, and granted summary judgment in favor of respondents (A. 57). The court of appeals affirmed the judgment, by order, "for the reasons set forth in the opinion of [the district court]" (A. 58).

ARGUMENT

INTRODUCTION AND SUMMARY

The question whether the government's notice of tax lien was properly filed in the federal district court in this case is, we submit, controlled by this Court's decision in *United States* v. *Union Central Life Ins. Co., supra.* The applicable federal statute in both cases, Section 3672(a) of the Internal Reve-

nue Code of 1939, provided that a federal tax lien would be valid against any mortgagee, pledgee, purchaser, or judgment creditor if notice thereof had been timely filed (1) in an office in which the State or territory where the property is located "has by law authorized the filing of such notice * * *" or (2) if the State or territory "has not by law authorized the filing of such notice in an office within the State or Territory" in the office of the Clerk of the United States District Court for the district in which the property subject to the lien was located. In both *Union Central* and this case the government filed its timely notice of tax lien in the federal district court because the Michigan statute purporting to authorize the filing of such notices required that the notice contain "a description of the land upon which a lien is claimed." Since the standard form of notice of lien used by the Internal Revenue Service throughout the country has not attempted to describe the property that might be encumbered by the lien, the Service determined that the Michigan statute was not a proper authorization for the filing of its notices and that federal court filings were necessary in Michigan in order to assure coverage of any real property owned by a delinquent taxpayer. This Court in *Union Central* sustained the government's position and held that the filing in the federal district court satisfied the requirement of Section 3672(a).

The Court's decision in *Union Central* can mean nothing less than that other liens, recorded in the federal courts at a time when the State statute re-

quired a description of real property, similarly were properly perfected under federal law. As we show *infra*, there is no merit in the view of the courts below that this case is distinguishable from *Union Central*. Nor is there any basis for the conclusion of the courts below that *Union Central* applies only to cases in which the competing interest in the property arose after the announcement of that decision. The square holding of *Union Central* is that State filings were not authorized by the Michigan statute. Accordingly, federal court filings while the Michigan statute was in force are valid irrespective of the dates of filing or of the creation of the subsequent interest.

UNDER THIS COURT'S DECISION IN UNITED STATES v. UNION CENTRAL LIFE INS. CO., THE GOVERNMENT'S TAX LIEN WAS PROPERLY FILED IN THE DISTRICT COURT AND THUS ENTITLED TO PRIORITY.

1. *Union Central* involved a notice of federal tax lien against delinquent Michigan taxpayers filed in a federal district court in 1954. Several months after the government's filing, the taxpayers executed a mortgage on certain real property, which was recorded in the office of the county register of deeds in accordance with Michigan law. The mortgagee subsequently instituted a foreclosure action in a Michigan court and joined the government as a defendant, claiming that its mortgage was entitled to priority because notice of the tax lien had not been filed in the office of the register of deeds where the Michigan statute purported to authorize such filing.[2]

[2] Act 104, Public Acts of Michigan of 1923, Appendix A, *infra*, pp. 18–19.

The government argued that its federal-court filing was proper because the Michigan statute did not authorize the filing of federal tax lien notices in a State office within the contemplation of Section 3672, since it required that such notice describe the real property on which a lien was asserted. The Supreme Court of Michigan held that the federal lien was subordinate to the mortgage. This Court reversed, holding (368 U.S. at 296) that

> The Michigan law authorizing filing only if a description of the property was given placed obstacles to the enforcement of federal tax liens that Congress had not permitted, and consequently no state office was "authorized" for filing within the meaning of the federal statute. It was therefore error for the Michigan courts to fail to give priority to the Government's lien here, notice of which had been filed in the District Court in accordance with federal law.

The present case is identical with *Union Central* in all material respects. Here, as in *Union Central,* the same Michigan statute permitted the filing and recordation of a federal tax lien notice only on the condition that the notice contain "a description of the land upon which a lien is claimed." Here too, the government, consistent with its administrative practice, refused to comply with that condition and filed its notice of lien in the federal district court under the alternative procedure specified in Section 3672(a)(2). The issue in both cases was whether filing in a State office was "authorized" within the meaning of the

Internal Revenue Code of 1939.[3] In the absence of such authorization it is clear that the government did all that was required to give its lien priority.[4]

Although it had been assumed that that issue was dispositively settled in *Union Central,* the district court in the present case found a path to a different result, and the court of appeals endorsed it. We submit that both courts went astray.

2. The court below found *Union Central* distinguishable because in that case the government had attempted a State filing of its standard notice, which was rejected by the register of deeds, while in the instant case there was no allegation that a State filing was attempted and rejected (A. 55). Both the factual and legal premises of this asserted distinction, however, are erroneous. Although the parties stipulated in *Union Central* that it was the policy of the register of deeds not to accept a lien notice which did not describe real property (see 368 U.S. at 293), we can

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[3] We agree with the district court's apparent conclusion that the provisions of the 1939 Code apply in this case. The effectiveness of the government's filing in 1950 is, of course, governed by the 1939 Code, and in the absence of any statutory limitations period on the effectiveness of the filing (compare Section 6323(g)(3) of the 1954 Code, 26 U.S.C. (Supp. III), 6323(g)(3)), the lien remained in effect, according to the filing, at the time respondents purchased the property and at the time the government instituted this action.

[4] Since the tax lien notice in this case was filed in the district court almost ten years before the respondents purchased the property, it is clear that the tax lien should be accorded priority over the respondents' title to the property under the settled principle that "the first in time is the first in right". *United States* v. *New Britain*, 347 U.S. 81, 85–87.

find nothing in this Court's opinion or in the briefs and record of the case which indicates that an unsuccessful State filing was actually attempted; indeed, such an attempt would have been most unlikely since the lien notice was filed after the Michigan Attorney General had ruled that the standard federal tax lien notices were not entitled to be recorded (*ibid;* Transcript of Record, No. 52, October Term, 1961, pp. 9–10). In all events, an unsuccessful attempt plainly would not have afforded any more effective notice of the lien to the mortgagee in *Union Central* or to the purchasers here.

The district court's reliance on the failure to attempt a State filing most likely rests upon a supposition that the county register of deeds might have accepted and recorded a notice if tendered. That possibility is legally irrelevant, however, for, in this posture, the district court's decision purports to overrule *Union Central* rather than distinguish it. Since the Michigan statute—as construed by this Court in *Union Central*—did not "authorize" the filing of notices in a State office, it follows under Section 3672 that the federal court filing satisfied the perfection requirement. Section 3672 required the government to file either in a State office or in a federal district court, but not in both. It is plainly inconsistent with *Union Central* to refuse to give effect to a properly recorded notice of lien merely because the government failed to take some step which it did not have to take and which was not authorized by the State law.[5]

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[5] Accordingly, it is irrelevant to the disposition of this case that the Service filed a notice of lien against the taxpayer in

The district court alternatively held (A. 55–57) that *Union Central* was inapplicable in the circumstances of this case because respondents had purchased the property prior to the decision in *Union Central*, at a time when there was "every indication" that the Michigan statute would be upheld as a valid authorization for filing federal tax lien notices. Although the court did not expressly so state, it ruled, in effect, that the holding in *Union Central* was to be applied only to cases in which the competing interest in the property arose after the announcement of that decision. This position is without merit. The situation of the mortgagee in *Union Central* was identical to that of the

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Wayne County in 1950, a fact on which the district court relied in suggesting that the Register of Deeds in Livingston County might have accepted the Service's notice (A. 55). The record does not reveal any of the circumstances of the Wayne County filing, although we are informed that such State filings occasionally were made where the Register of Deeds would accept the Service's notice, limited to personal property. The fact that one register of deeds was willing to accept the federal notice at that time does not affect the significance of the Michigan Attorney General's subsequent ruling that such notices were not entitled to be filed and recorded; rather it suggests that in all probability the county registers of deeds applied differing policies toward federal notices, thereby producing inconsistent results in a situation where uniformity is essential. More importantly, the Service correctly determined that a federal court filing was in all events necessary to obtain coverage of any real property.

It is similarly immaterial that the Service filed notices in Livingston and Genesee Counties in 1961, after the Michigan statute had been amended to authorize the filing of federal notices (see A. 5). Those filings, for whatever reason made, added nothing to the effectiveness of the lien which, as *Union Central* holds, was properly recorded in the district court in 1950.

respondents here. Surely, irrespective of this Court's decision in *Union Central,* it would upon the facts of this case apply the same principles of law and reach the same conclusion. Yet, the result of the court of appeals' rationale is that the government's security status is weakened rather than strengthened by the *Union Central* decision—a result which is hardly supportable. Indeed, it would place a premium on disorderliness in the administration of federal law if the government were to be penalized, as the district court in effect ruled, for adhering to a position which ultimately was confirmed by this Court.

There is nothing in the *Union Central* opinion, moreover, which even remotely suggests that the Court contemplated a departure from the general principle that its authoritative announcements of the federal law would thereafter be applied in all cases arising under the statute.[6] Aside from the conceptual difficulties inherent in a rule that the validity of a lien notice is determined not when it is filed but as of the time when a private party subsequently obtains an interest in the property, the district court's conclusion that respondents justifiably relied on an erroneous rule announced in the Sixth Circuit prior to *Union*

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[6] See, *e.g.*, *Geiger's Estate* v. *Commissioner*, 352 F. 2d 221 (C.A. 8), certiorari denied, 382 U.S. 1012; *United States* v. *Siano*, 356 F. 2d 927 (C.A. 2); and *Nerem* v. *Commissioner*, 41 T.C. 338, all of which held that *James* v. *United States*, 366 U.S. 213 (holding that embezzled funds constituted taxable income to the embezzler) applied to funds that were embezzled prior to the *James* decision.

Central is quite unpersuasive.[7] A detailed analysis of the legislative history led this Court to conclude in *Union Central* (368 U.S. at 294–296) that Congress had clearly stated in committee reports going back to the early 1940's—as well as in the statute itself—that the States are authorized to designate only the appropriate *place* for filing tax lien notices and never their *content*. Cf. *Jones* v. *Liberty Glass Co.*, 332 U.S. 524, 533–534. In addition, the Court in *Union Central* also noted that the government consistently refused throughout the relevant period to conform to the Michigan requirement concerning the description of real property (368 U.S. at 293, 295–296). Indeed, the necessity for Michigan title searchers and lawyers to check

[7] Compare *Linkletter* v. *Walker*, 381 U.S. 618, 636. The district court's reliance on *National Labor Relations Board* v. *Rockaway News Co.*, 345 U.S. 71, *and Chicot County Drainage Dist.* v. *Baxter State Bank*, 308 U.S. 371, is misplaced. *Chicot County* involved the rights of bondholders which had been determined in a prior judicial proceeding under a federal statute that was subsequently declared unconstitutional. The Court determined that the actual existence of the statute and the proceeding which was conducted under it could not be ignored and that the principle of *res judicata* should be applied. In *Rockaway* the Court cited *Chicot County* for its approach to the question of the effect of an unconstitutional statute prior to its being held unconstitutional; the Court held that the Labor Board could not ignore a labor contract which was subsequently declared invalid in determining whether an employer's conduct pursuant to the contract constituted an unfair labor practice. The effect, if any, to be given to respondents' erroneous conception of the law in the present case does not involve any of the considerations applicable to the parties' reliance on an earlier judgment or to the determination of an employer's motivation in the context of a Labor Board proceeding.

the lien indexes in the federal courts, in view of the government's response to the Michigan statute, was well recognized several years before respondents purchased the property in this case. Wright, *Title Examinations in Michigan as Affected by the General Federal Tax Lien*, 51 Mich. L. Rev. 183, 192–198 (1952).[8]

3. The decision below presents a significant admin-

[8] In view of the grounds on which the decision below was based, neither the district court nor the court of appeals found it necessary to reach respondents' additional contentions that the tax lien was defective because (1) the government failed to file notice in the State office after 1956, when the legislature enacted a new filing statute that repealed the invalid requirement for description of real property, and (2) the government failed to file notice of its lien (in the State office) in 1960 upon the death of Mrs. Donnelly when, respondents argued, the property first became subject to the lien. The first contention concedes that the lien was properly filed in the district court in 1950, but assumes that the government has a continuing duty to respond to any change in State law by refiling in a newly-authorized State office all notices which had properly been filed in the district court. In *In re Dartmont Coal Co.*, 46 F. 2d 455 (C.A. 4), the court persuasively reasoned that Congress had not intended to impose such an unusual administrative burden on the government to preserve the effectiveness of its liens. Were the State of Michigan to attempt to impose a requirement that all tax liens filed at a certain time in a certain place be refiled by a certain time in a different place in order to retain their validity, such an attempt would obviously amount to a State-imposed "obstacle" which *Union Central* forbids. Assuming *arguendo* that the government could not foreclose on the lien until the taxpayer became sole owner of the property at his wife's death, respondents' second contention is completely inconsistent with this Court's decision in *Glass City Bank* v. *United States*, 326 U.S. 265, that the government's tax lien attaches not only to property which the taxpayer owns at the time notice of the lien is filed but also to property subsequently acquired by the taxpayer during the life of the lien. It would be extraordinarily difficult for the government to monitor the affairs of every delinquent taxpayer and file successive notices of lien every time

istrative problem for the Internal Revenue Service. The rationale announced by the district court and adopted by the court of appeals is applicable not only to notices of liens filed in the federal district court in Michigan prior to August 11, 1956 (the effective date of the repeal of the Michigan statute, see 368 U.S. 292–293; Michigan Public and Local Acts of the Legislature (Regular Session, 1956), No. 107, pp. 213–214, 737),[9] but also to federally filed notices in several other States. The Internal Revenue Service advises that the adoption of the 1962 version of the Uniform Federal Tax Lien Registration Act in Pennsylvania, Massachusetts, and Wisconsin[10] resulted in federal court filings in those States that might be invalidated under the district court's reasoning, which presumably would be applicable to the 1954 Code as well as the 1939 Code; notices filed in Illinois between 1966 and 1967 also may be affected.[11] In sum, the validity of approximately 40,000 notices filed in the district courts in five States has been clouded by the decision in the instant case, with resulting uncertainty of land titles

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a taxpayer acquires a significant piece of property on which the government might be required to execute in order to liquidate the taxpayer's liability.

[9] The applicability of the Michigan statute involved here in a case where the taxpayer's estate contained only personal property is pending before this Court on petition for a writ of certiorari in *United States of America* v. *Henry Falk*, No. 844, this Term.

[10] The 1962 Lien Act is still in effect in Massachusetts and was in effect for two years in both Pennsylvania and Wisconsin.

[11] See, *e.g.*, Rev. Rul. 64–170, 1964–1 Cum. Bull. (Part 1) 499, amplified by Rev. Rul. 64–252, 1964–2 Cum. Bull. 497, modified by Rev Rul. 66–63, 1966–1 Cum. Bull. 287; and see Rev. Proc. 67–15, 1967–1 Cum. Bull. 592, superseded by Rev. Proc. 68–1, 1968–1 Cum. Bull. 741.

for the public as well as potential injury to the government.

CONCLUSION

For the reasons stated, the judgment of the court of appeals should be reversed and the cause remanded to the district court.

Respectfully submitted.

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DECEMBER 1969.

APPENDICES

APPENDIX A

Internal Revenue Code of 1939:

SEC. 3670. PROPERTY SUBJECT TO LIEN.

If any person liable to pay any tax neglects or refuses to pay the same after demand, the amount (including any interest, penalty, additional amount, or addition to such tax, together with any costs that may accrue in addition thereto) shall be a lien in favor of the United States upon all property and rights to property, whether real or personal belonging to such person.

[26 U.S.C. (1952 ed.) 3670.]

SEC. 3671. PERIOD OF LIEN.

Unless another date is specifically fixed by law, the lien shall arise at the time the assessment list was received by the collector and shall continue until the liability for such amount is satisfied or becomes unenforceable by reason of lapse of time.

[26 U.S.C. (1952 ed.) 3671.]

SEC. 3672 [as amended by Sec. 401 of the Revenue Act of 1939, c. 247, 53 Stat. 862, 882, and Sec. 505 of the Revenue Act of 1942, c. 619, 56 Stat. 798, 957] VALIDITY AGAINST MORTGAGES, PLEDGEES, PURCHASERS, AND JUDGMENT CREDITORS.

(a) *Invalidity of Lien Without Notice*—Such lien shall not be valid as against any mortgagee, pledgee, purchaser, or judgment creditor until notice thereof has been filed by the collector—

(1) *Under State or Territorial laws*—In the office in which the filing of such notice is

authorized by the law of the State or Territory in which the property subject to the lien is situated, whenever the State or Territory has by law authorized the filing of such notice in an office within the State or Territory; or

(2) *With Clerk of District Court*—In the office of the clerk of the United States district court for the judicial district in which the property subject to the lien is situated, whenever the State or Territory has not by law authorized the filing of such notice in an office within the State or Territory; * * *

* * * * *

[26 U.S.C. (1952 ed.) 3672.]

Michigan Public Acts, 1923, No. 104, as amended by Michigan Public Acts, 1925, No. 13:

An Act to provide for and to authorize the filing of notices of federal tax liens by the United States of America in the office of the register of deeds in the various counties of this state, pursuant to section three thousand one hundred eighty-six of the revised statutes of the United States.

The People of the State of Michigan enact:

Section 1. That whenever the collector of internal revenue for any district in the United States, or any tax collecting officers of the United States having charge of the collection of any tax payable to the United States, shall desire to acquire a lien in favor of the United States for any tax payable to the United States against any property real or personal, within the state of Michigan pursuant to section three thousand one hundred eighty-six of the revised statutes of the United States, he is hereby authorized to file a notice of lien, setting forth the name and the residence or business address of such taxpayer, the nature and the amount of such assessment, and a description of the land upon which a lien is claimed, in the office of the register of deeds in and for the county

or counties in Michigan in which such property subject to such lien is situated; and such register of deeds shall, upon receiving a filing fee of fifty cents for such notice, file and index the same in a separate book, entitled "Record of the United States Tax Liens", indexing the same according to the name of such taxpayer as stated in the notice; all in pursuance of said section three thousand one hundred and eighty-six of the revised statutes of the United States.

APPENDIX B

Opinion of the Attorney General of Michigan, No. 1709, dated September 10, 1953 (Biennial Report, pp. 216–217, of the Attorney General of Michigan (1952–1954)):

FEDERAL TAX LIEN NOTICE—REGISTER OF DEEDS.—Federal tax lien notice claiming lien on all property of taxpayer not entitled to recordation where it does not describe land on which lien is sought.

September 10, 1953.

No. 1709
Mr. JOSEPH E. KILLIAN,
Prosecuting Attorney, Berrien County,
Commercial Bank Building,
St. Joseph, Michigan

DEAR SIR: You have presented for my opinion the following question:

"Is a notice of federal tax lien, issued pursuant to 26 U.S.C.A. section 3672, entitled to recordation in the office of a county register of deeds where it omits to describe the land of the taxpayer against whom the lien is sought?"

The federal law (26 U.S.C.A., § 3672) requires that notices of tax liens be recorded in accordance with the laws of the particular state where provision has been made for filing of such liens.

Pursuant to federal law, Michigan provided for the filing of such liens by Act No. 104 of the

Public Acts of 1923 (C.L. 1948, § 211.521 [Stat. Ann § 7.751]).

This act provides as follows:

"That whenever the collector of internal revenue for any district in the United States, or any tax collecting officers of the United States having charge of the collection of any tax payable to the United States, shall desire to acquire a lien in favor of the United States for any tax payable to the United States against any property, real or personal, within the state of Michigan pursuant to section three thousand one hundred eighty-six (3186) of the revised statutes of the United States, he is hereby authorized to file a notice of lien, setting forth the name and the residence or business address of such taxpayer, the nature and the amount of such assessment, and a description of the land upon which a lien is claimed, in the office of the register of deeds in and for the county or counties in Michigan in which such property subject to such lien is situated; and such register of deeds shall, upon receiving a filing fee of fifty (50) cents for such notice, file and index the same in a separate book, entitled 'Record of United States Tax Liens,' indexing the same according to the name of such taxpayer as stated in the notice; all in pursuance of said section three thousand one hundred eighty-six (3186) of the revised statutes of the United States."

This section has been considered in various federal court cases, including *Youngblood* v. *United States,* 141 F (2) 912, and has been declared to be reasonable and that federal tax notices must comply with its terms in order to be recorded. The act requires that any land against which a lien is sought shall be described but does not require any description in the case of personal property.

You have supplied me with a copy of Treasury Department Form No. 668, which you advise is the form used to file for liens. This form recites in part as follows:

"Pursuant to the provisions of Section 3670, 3671, and 3672 of the Internal Revenue Code of the United States, notice is hereby given that there has been assessed * * * against the following-named taxpayer, taxes (including interest and penalties) * * * and that by virtue of the above-mentioned statutes the amount (or amounts) of said taxes, * * * is (or are) a lien (or liens) in favor of the United States upon all property and rights to property belonging to the taxpayer, * * *."

Since the form of notice used claims a lien on all property of the taxpayer and does not contain a description of any land, the notice is not entitled to recordation since it fails to comply with the provisions of Act 104 of the Public Acts of 1923, as set forth above.

Yours very truly,

FRANK G. MILLARD,
Attorney General.

U.S. GOVERNMENT PRINTING OFFICE: 1969

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1969

No. 104

UNITED STATES OF AMERICA,
Petitioner,
vs.
ESTATE OF THOMAS S. DONNELLY, SR., ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR RESPONDENTS

QUESTIONS PRESENTED

I.

Whether respondents Carlson, as bona fide purchasers in August 1960 of land in Livingston County, Michigan, were protected by the tax lien filing requirements of the Internal Revenue Code when notices of the tax liens against Donnelly were filed in 1950 only in Wayne County where Donnelly resided and with the Clerk of the local United States District Court, but not with the Livingston County Register of Deeds, when the Michigan Attorney General's Opinion of September 10, 1953 referred to in *United States* v. *Union Central Life Ins. Co.*, 368 U. S. 291 (1961), had not been promulgated and a notice of said tax liens could have been filed in Livingston County in 1950.

Whether Carlson, as bona fide purchasers in August

II.

1960 of land in Livingston County, were protected by the Uniform Federal Tax Lien Registration Act adopted in Michigan in 1956 pursuant to the Internal Revenue Code when Internal Revenue Service neglected until March 1961 to file any notice with the Livingston County Register of Deeds of 1950 tax liens against Donnelly who *acquired* said land when his wife died in May 1960.

STATUTES INVOLVED

In addition to petitioner's statutory citations, Section 6323(a) of the Internal Revenue Code of 1954 is set forth in Appendix A, *infra*, p. 16.

STATEMENT

On December 30, 1966 petitioner filed a Complaint in the District Court to foreclose income tax liens which arose from assessments made in 1950 against Thomas S. Donnelly, Sr. who died in January 1963. Respondents Carlson, who petitioner concedes were bona fide purchasers, acquired certain land in Livingston County, Michigan, from Donnelly in August 1960, sixteen months before the decision in *United States* v. *Union Central Life Ins. Co.*, supra.

At the time the assessments were made against Donnelly, the 1923 Michigan statute providing for local filing of Federal tax lien notices with county registers of deeds had been in force for twenty-seven years. Although the statute required that the notice contain a description of the land against which the lien was claimed, it was not the practice of registers of deeds in Michigan to refuse notices without such a description until 1953 when Michigan Attorney General's Opinion No. 1709 (petitioner's Appendix B, pp. 19-21) was published. Prior to that Opinion, the Internal Revenue Service had been filing locally under the Michigan statute. On November 28, 1950 (the day before the notice was filed in the District Court) the Register of Deeds of

Wayne County, Michigan, where Donnelly resided, accepted a standard notice of lien. Neither the Complaint (A.5) nor the Opinion of the District Court (A.52) referred to by petitioner in its "Statement" (p. 4) supports petitioner's allegation that said notice was limited to Donnelly's personal property.

Although petitioner claims that the Treasury Department refused to acquiesce in the Michigan requirement that real property be described in its notices, it did in fact acquiesce when it made no attempt to appeal the decision of the United States Court of Appeals for the Sixth Circuit in *Youngblood* v. *United States*, 141 F. 2d 912, which upheld the Michigan filing requirements in 1944—sixteen years before respondents acquired Donnelly's property. The 1950 filing in Wayne County and the 1961 filings in Livingston and Genesee Counties (A. 5) are evidence of its acquiescence.

Petitioner's allegation that Donnelly executed a *second* statutory waiver in April 1961 (eight months after his transaction with respondents) extending the time for collection of his tax liabilities to December 31, 1966 has not been admitted (A. 10). Paragraph 1 of respondents' Affirmative Defense A.—Statute of Limitations (A. 11) contends that the alleged 1961 waiver could not extend the period of enforcement of the lien as against respondents' land, and this issue has not been adjudicated.

ARGUMENT

INTRODUCTION and SUMMARY

The issues in this appeal are twofold. First, is whether the tax lien notice filed in the District Court in 1950 entitles petitioner to priority over a bona fide purchaser who sixteen months before the decision in *United States* v. *Union Central Life Ins. Co., supra*, acquired land in a county where such a notice could have been filed in 1950 (A. 44), or at any

time after April 13, 1956. Involved in this issue is whether this Court intended that significance be given to the statement at 368 U.S. 293:

> "In support of its contention the Government pointed to the fact that in 1953 the Michigan Attorney General ruled that federal tax lien notices not containing such a description are not entitled to recordation, and it is stipulated that *from the time of that ruling, up to 1956*, 'it was the policy of the office of the Register of Deeds for said County of Oakland not to accept for recording notices of Federal tax liens which did not contain a legal description of any land'."*

The crux of this issue is whether *Union Central* is to be construed as retroactively affecting priorities of title interests which came into being in Michigan during the entire forty-year period between 1923 and 1961 when *Union Central* determined the statute, as interpreted and enforced by local registers of deeds after the 1953 Michigan Attorney General's Opinion, to be invalid as to a tax lien which arose in 1954.

The second issue in this appeal is whether the filing in the District Court in 1950 (irrespective of the determination of the first issue in this appeal) can be considered notice *in perpetuity* affecting the land purchased by respondents from Donnelly in August 1960. The question of law involved is whether respondents as bona fide purchasers were entitled to the protection of the notice filing requirements of the Internal Revenue Code where the land in Livingston County acquired in 1949 by Donnelly and his wife as tenants by the entireties did not belong to Donnelly until his wife

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*The official synopsis of *Union Central* (368 U.S. at 291) states:
"... and it was the *practice* of county officials to refuse to accept for recording notices of Federal tax liens not containing such descriptions ..."

died in May 1960, and where, although in compliance with Section 6323(a) of the Internal Revenue Code of 1954 Michigan had in 1956 adopted the Uniform Federal Tax Lien Registration Act (Act 107, Public Acts of Michigan of 1956; M.S.A. 7.753(1) et seq.), no effort was made by petitioner to file a notice which would cover Donnelly's newly-acquired property in Livingston County until March 1961.

WHETHER THE DECISION IN UNITED STATES v. UNION CENTRAL LIFE INS. CO. AFFECTS FEDERAL TAX LIENS WHICH AROSE IN MICHIGAN BETWEEN 1923 AND SEPTEMBER 10, 1963.

Union Central involved a tax lien notice filed in the District Court in January 1954 — several months after the Michigan Attorney General's Opinion of September 10, 1953, *supra*. In *Union Central* the Government supported its contention that its filing in the District Court gave it priority over a mortgage subsequently executed and recorded with the Oakland County Register of Deeds by stressing the importance of the 1953 Michigan Attorney General's Opinion and the stipulated policy of the Oakland County Register of Deeds not to accept Federal tax lien notices without a description of land from the time of that ruling, up to 1956 when Act 104, Public Acts of Michigan of 1923 was repealed and replaced by the Uniform Federal Tax Lien Registration Act.

The present case is not identical to *Union Central* since the tax liens arose in 1950—three years before the Michigan Attorney General's Opinion. Although notice of the tax liens against Donnelly was accepted on November 28, 1950 by the Register of Deeds in the County where Donnelly resided, no attempt was made to file a similar notice in Livingston County where respondents' land is located until March 20, 1961 (A. 5). It was conceded by the Government

that in 1950 the notice could have been filed with the Livingston County Register of Deeds (A. 44)*.

The trial court correctly distinguished this case from *Union Central*. Respondents submit that this Court did not intend that its lengthy reference to the 1953 Michigan Attorney General's Opinion and the subsequent events in Oakland County to be taken as mere *dicta*.

IS UNITED STATES v. UNION CENTRAL LIFE INS. CO. TO ALTER PRIORITIES OF TITLE IN MICHIGAN BETWEEN 1923 AND 1961.

Matters involving title to land and priorities of competing interests in land involve substantial questions of vested rights. In *Union Central* this Court had before it certain events which occurred in Michigan during the period from 1953 through 1956 and in stating:

> "It was therefore error for the Michigan courts to fail to give priority to the Government's lien *here*, notice of which had been filed in the District Court in accordance with Federal law." (368 U.S. at 296).

it confined its opinion to the period of time and the events in issue. The trial court in considering the vested rights of respondents and the relative equities of the parties correctly reasoned that in *Union Central* this Court did not intend to alter property rights which vested during the entire 33 year life-span of the 1923 statute. Accordingly, the trial court did not allow petitioner, more than six years after bona fide purchasers had acquired land, to use a decision announced sixteen months after such purchase to divest

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*Although in 1950 the land did not belong to Donnelly within the meaning of Section 3670 of the Internal Revenue Code of 1939, there were occasions when the Internal Revenue Service filed notices for the tax liability of one of the spouses where only entireties property was involved. (See *Haldeman* v. *U.S.*, E. D. Mich. S.D., 93 F. Supp 889 (1950)). A notice could have been tendered and the Livingston County Register of Deeds would have accepted same without inquiring into whether any property in that County actually belonged to Donnelly at that time

respondents of rights which became vested under events which occurred before 1953 and after 1956.

Petitioner claims that "consistent with its administrative practice" it refused to comply with the Michigan statute and filed its notice of lien in the District Court in 1950. If this is true, then petitioner's administrative practice was contrary to the law as had been interpreted in 1944 by the Court of Appeals in *Youngblood* v. *United States, supra,* and there was no justification for petitioner to refrain from even attempting an appeal of that decision.* Petitioner allowed *Youngblood* to stand for seventeen years as the highest judicial pronouncement of the validity of the 1923 Michigan statute, and petitioner now asks this Court to extend *Union Central* retroactively eleven years to alter vested rights which came into being in the interim. The trial court correctly relied upon the principles enunciated by this Court in *Chicot County Drainage District* v. *Baxter State Bank,* 308 U.S. 371 (1939) and *NLRB* v. *Rockaway News Supply Co.,* 345 U.S. 71 (1953):

> "The past cannot always be erased by a new judicial declaration. The effect of the subsequent ruling as to invalidity may have to be considered in various aspects—with respect to particular relations, individual and corporate, and particular conduct, private and official.
>
> "Questions of rights claimed to have become vested, of status, of prior determinations deemed to have finality and acted upon accordingly, of public policy in the light of the nature both of the statute and of its previous application, demand examination." (308 U.S. at 374).

Because petitioner claims that it adhered to a position which ultimately was confirmed by this Court, it asks that a penalty be imposed upon respondents and others for rely-

*No petition for certiorari was ever filed.

ing upon the law as known in Michigan for almost forty years. Whereas, on hindsight, the author of the law review article cited by petitioner may have correctly predicted a development ten years in the future, hundreds of Michigan lawyers and title examiners who reviewed and passed upon thousands of real estate transactions which occurred between *Youngblood* (1944) and *Union Central* (1961) had to follow the law as it was known to them. *Youngblood* was the only precedent available to them and thousands of transactions were made in reliance upon *Youngblood*. Petitioner had ample opportunity to bring about a change in that precedent, but until *Union Central* came before this Court in 1961 petitioner did nothing to clarify the law. Under the circumstances, a broad, retroactive construction of *Union Central* would be contrary to equity and good conscience.

Petitioner asserts that because it made administrative decisions in recent years to disregard the clear intent of Section 6323(a) of the 1954 Code (i.e., protection of innocent mortgagees, purchasers, etc.) by federally filing notices in several States which designated local offices for the such notices, *post-Union Central* filings in five States have been "clouded" by the decision of the trial court. At the same time, and with the fence-straddling reminiscent of the dual filing against Donnelly (and presumably others in Michigan) in 1950, petitioner has instructed its agents to make local filings in those States "for the convenience of persons who have occasion to search for such notices". (See Rev. Rul. 64-252, 1964-2 Cum. Bull. 497; also see Rev. Proc. 67-15, 1967-1 Cum. Bull. 592). *Query:* Which side of the "fence" will petitioner take when the inevitable occurs and one of its agents neglects to federally file one of the notices it has been locally filing for "convenience"?

Although respondents have examined the statutes in ques-

tion and believe that petitioner's objections are without merit, the validity of notices filed under those statutes and petitioner's administrative procedures with respect to same would best be left to direct litigation.

WAS INTERNAL REVENUE SERVICE REQUIRED TO FILE A TAX LIEN NOTICE IN LIVINGSTON COUNTY IN MAY 1960.

Petitioner has consigned to a mere footnote an issue of law raised by respondents and thoroughly briefed by both parties in the trial court and before the Court of Appeals. In August 1956 the Uniform Federal Tax Lien Registration Act, *supra,* became effective in Michigan. The validity of that Act has never been questioned by petitioner. As respondents have argued in this Brief, and as was determined by the trial court and the Court of Appeals, the federal filing in 1950 did not constitute *notice* to respondents when they as bona fide purchasers in 1960 acquired Donnelly's Livingston County property. Respondents' contention that petitioner was obligated to file a notice in Livingston County after Mrs. Donnelly's death in 1960 is in no way intended by them to be an admission of the validity of the federal filing.

Respondents assume and contend that the Government did, in fact, have a continuing duty to respond to changes in State law by filing notices affecting *after-acquired* property in the appropriate State office "authorized" (as used in §3672 of the Internal Revenue Code of 1939) or "designated" (as used in §6323(a) of the 1954 Code)* *whenever* the State by law "authorized" such filing or "designated"

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*Although the trial court referred in its opinion to § 3672 of the 1939 Code, the Complaint (A.6) alleges that Donnelly signed a statutory waiver in 1956. Assuming that this is true, then the lien would have been extended under the 1954 Code and the wording of § 6323(a) may be applicable.

such office. That there is such a duty is clearly stated in *Union Central* (368 U.S. at 294):

> " . . . §3672(a)(1) unquestionably requires notice of a federal lien to be filed in a state office when the State authoritatively designates an office for that purpose, . . . ".

Petitioner confuses the tax lien which was created in 1950 in favor of the United States upon property belonging to Donnelly pursuant to Section 3670 of the 1939 Code with the government's statutory obligation to *perfect* such lien as against mortgagees, pledgees, purchasers or judgment creditors of such property, or of Donnelly's after-acquired property *(Glass City Bank* v. *United States,* 326 U.S. 265 (1945)*)* by filing a notice of the lien in the office designated in §3672 of the 1939 Code (or §6323(a) of the 1954 Code). Failure to perfect the lien by filing does not invalidate the lien itself but merely affects the relative priorities of the Government and the protected classes of intervening third-parties, and then only with respect to those properties of the delinquent taxpayer in which such third-parties have obtained an interest. In other words, the 1950 liens against Donnelly, if properly extended by the statutory waivers purportedly signed on February 14, 1956 and April 17, 1961, were not themselves voided by petitioner's failure to file notice in Livingston County prior to Donnelly's sale to respondents. The liens merely became subordinate to the title interest which respondents acquired in said land as bona fide purchasers without knowledge of said liens.

Petitioner's apparent argument that from 1950 on it had a lien on the land which Donnelly sold to respondents but that it merely could not "foreclose on the lien" until Donnelly became the sole owner of the property at his wife's death in 1960 is contrary to the authorities extensively

briefed by respondents in the trial court and before the Court of Appeals. In argument before the Court of Appeals petitioner conceded that under Michigan law it had no lien against respondents' property until Mrs. Donnelly died.

Michigan adheres to the common-law doctrine that in an estate by the entireties neither the husband nor the wife alone have an interest capable of being sold, mortgaged, executed upon, taken by a trustee in bankruptcy, or levied upon for the tax liability of one of the spouses. See *United States* v. *Nathanson,* D.C., E.D., Mich., S.D., 60 F. Supp. 193 (1945) and the cases cited therein.

The Court of Appeals for the Eighth Circuit in the case of *United States* v. *Hutcherson,* 188 F. 2d 326 (1951) in affirming a District Court in Missouri where the common-law concept of tenancy by the entireties is identical to that in Michigan said:

> "Under Missouri law the individual interest of the husband or wife in an estate by the entirety is, like the rainbow in the sky or the morning fog rising from the valley, not such an estate as may be subjected to the grasp of an attaching creditor or which will permit the adherence thereto of a tax lien. We are not at liberty to change the nature of either. The definition of the nature of the Missouri estate by the Missouri courts has become the 'inveterate policy' of the state. * * * It is applied by the state courts in determining whether liens arising under state law may attach to the individual interest of either spouse. Uniformly it is held that such liens may not. Not because State or Federal liens are withheld from this particular 'right to property', but because *the interest of one spouse in the estate by the entirety in Missouri is not a right to property or property in any sense.* We may not change the nature of the estate or the interest of one spouse therein for purposes of federal taxation.

> "It is argued that the United States only sought to hold a lien against the husband's possible future interest and that the trial court had no right to defeat that right. *The answer is that the husband had no separate interest to which the lien could attach* * * *". (188 F. 2d at 331).

The Court of Appeals for the Fifth Circuit, reviewing Florida law and citing *Hutcherson* as authority, held in *United States v. American National Bank of Jacksonville*, 255 F. 2d 504 (1958), at 507:

> "The husband * * * did not have an interest in the subject property during his wife's lifetime to which a lien for Federal taxes, owed by him but not by her, could attach. *Upon (the wife's) death the tax lien attached to the property as of the date of her death.*"

From the annotation in 75 A.L.R. 2d 1176 it is apparent that Florida, Missouri and Michigan have uniformly rejected attempts of creditors of one spouse, including the Government, to assert any interest in entireties property.

Respondents have never questioned this Court's decision in *Glass City Bank* v. *United States, supra,* as to the attachment of a federal tax lien to after-acquired property. They concede that the tax liens (but *not the notice* of the liens) *attached* to the Livingston County property *when it was acquired by Donnelly* but it is their contention that the property was not acquired by Donnelly until his wife died in May 1960. The tax liens attached in May 1960, but they were *not perfected* as against mortgagees, purchasers, etc. of Donnelly's Livingston County property under Section 6323(a) of the Internal Revenue Code of 1954, then in force, *until eight months after respondents' purchase.* In March 1961, nine months before *Union Central,* and without any other intervening events requiring such filing, a notice of the lien was first filed with the Livingston County Register of Deeds (A.5). A notice was also filed at that time in Gene-

see County, Michigan (A.5). It is evident that the Government recognized the necessity of complying with the Michigan Uniform Act, but its compliance was too late to give priority to its liens over respondents' intervening title interest.

Both the 1939 and the 1954 Codes* provided for local filing of a tax lien notice " * * * *whenever* the State or Territory has by law authorized (or designated) an office within the State or Territory for the filing of such notice". The word "whenever" is defined in Webster's Third New International Dictionary, 1963, as:

> "at any or all times that"; "in any or every instance in which"; "at whatever time"; "no matter when".

It is entirely consistent with orderly administration of the collection of revenues to require the Internal Revenue Service to *perfect* tax liens against *after-acquired* property by filing in a state or county where a delinquent taxpayer does not reside and at some time subsequent to the filing of a tax lien notice in his "home" state or county he acquires property for the first time.

In *Faulk* v. *United States*, 412 F. 2d 369 (1969) the Court of Appeals for the Sixth Circuit (at 373):

> "Some Government scrutiny of the affairs of delinquent taxpayers sufficient to enable it to know where to properly file notice of lien seems to have been contemplated by this entire statutory scheme. Requiring the Government to investigate the affairs of the delinquent taxpayer to determine to what property the statutory lien attaches and therefore where to properly file the required notice of lien in no way cuts down on the broad scope of the lien".

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*Substantial changes in wording of § 6323 of the 1954 Code were adopted in 1964 after the events involved in this appeal had all transpired.

The requirement that the Government prevent innocent third-parties from being subjected to "secret" Federal tax liens is manifested in the notice filing requirements of the Internal Revenue laws enacted by Congress in ever increasingly protective versions since 1913. Although the 1927 West Virginia legislature may have exceeded the intent of Congress *at that time* by providing for re-filing of *all* existing notices within a four-month period under penalty of declaring same void, *In re Dartmont Coal Co.*, 46 F. 2d 455 (C.A. 4) should not be construed as authority for the Government to avoid its obligation to file locally in a county where the delinquent taxpayer does not reside but at some time subsequent to the creation of the Federal tax lien (and after a state has provided for local filing) he acquires real property. Congressional intent to protect innocent third-parties is further indicated in the 1964 amendments to Section 6323 of the Internal Revenue Code of 1954 which, among other changes, requires the re-filing of notices whenever tax liens are extended beyond their usual six-year limitation period by the execution of statutory waivers.

Respondents Carlson who, as innocent purchasers of real property in reliance upon State law as known for almost 40 years, find their ownership jeopardized by the tax liabilities of a virtual stranger long deceased. The decision of the District Court, and its affirmation by the Court of Appeals, were based upon application of sound legal principles and tempered with proper regard for justice and equity. "Even the most solicitous regard for the protection of Federal revenues does not counsel a policy of tax collection at the expense of non-liable third parties." *U.S.* v. *Lebanon Woolen Mills Corp.*, D.C., N.H., 241 F. Supp. 393 (1964), at 399.

CONCLUSION

For the reasons stated, the judgment of the Court of Appeals should be affirmed.

Respectully submitted,
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Attorneys for Respondents Carlson

Dated: December 1969.

APPENDIX A

Internal Revenue Code of 1954:

SEC. 6323. VALIDITY AGAINST MORTGAGEES, PLEDGEES, PURCHASERS, AND JUDGMENT CREDITORS.

(a) Invalidity of Lien Without Notice. — Except as otherwise provided in subsections (c) and (d), the lien imposed by section 6321 shall not be valid as against any mortgagee, pledgee, purchaser, or judgment creditor until notice thereof has been filed by the Secretary or his delegate —

(1) Under state or territorial laws. — In the office designated by the law of the State or Territory in which the property subject to liens is situated, whenever the State or Territory has by law designated an office within the State or Territory for the filing of such notice; or

(2) With the clerk of district court. — In the office of the clerk of the United States district court for the judicial district in which the property subject to the lien is situated, whenever the State or Territory has not by law designated an office within the State or Territory for the filing of such notice; or

* * * * * * * *

NOTICE: This opinion is subject to formal revision before publication in the preliminary print of the United States Reports. Readers are requested to notify the Reporter of Decisions, Supreme Court of the United States, Washington, D.C. 20543, of any typographical or other formal errors, in order that corrections may be made before the preliminary print goes to press.

SUPREME COURT OF THE UNITED STATES

No. 104.—October Term, 1969

United States *v.* Estate of Thomas S. Donnelly, Sr., et al.	On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit.

[March 23, 1970]

Mr. Justice Marshall delivered the opinion of the Court.

In 1950, a tax liability of approximately $26,000 was assessed against the taxpayer Donnelly, a resident of Michigan. Upon assessment, a statutory lien was created in favor of the United States "upon all property and rights to property, whether real or personal" belonging to the taxpayer. Internal Revenue Code of 1939, § 3670. Under § 3672 of the 1939 Code, such a lien could become effective against subsequent purchasers of Donnelly's property in either of two ways: (1) by filing notice of the lien in the state office in which filing of such notice was authorized by state law; or (2) if filing in a state office was not authorized by state law, by filing notice of the lien in the United States District Court for the district in which the property was located.[1]

[1] The Internal Revenue Code of 1939 provides:

"Sec. 3670. Property Subject to Lien.

"If any person liable to pay any tax neglects or refuses to pay the same after demand, the amount (including any interest, penalty, additional amount, or addition to such tax, together with any costs that may accrue in addition thereto) shall be a lien in favor of the

A Michigan statute purported to authorize the filing of federal tax lien notices with the county register of deeds. However, the Michigan statute expressly required that notices of federal tax liens upon real property contain "a description of the land upon which a lien is claimed."[2] The standard tax lien notice form used by

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United States upon all property and rights to property, whether real or personal, belonging to such person.

"Sec. 3672. Validity Against Mortgagees, Pledgees, Purchasers, and Judgment Creditors.

"(a) *Invalidity of Lien Without Notice*—Such lien shall not be valid as against any mortgagee, pledgee, purchaser, or judgment creditor until notice thereof has been filed by the collector—

"(1) *Under State or Territorial laws*—In the office in which the filing of such notice is authorized by the law of the State or Territory in which the property subject to the lien is situated, whenever the State or Territory has by law authorized the filing of such notice in an office within the State or Territory; or

"(2) *With Clerk of District Court*—In the office of the clerk of the United States district court for the judicial district in which the property subject to the lien is situated, whenever the State or Terriory has not by law authorized the filing of such notice in an office within the State or Territory. . . ."

[2] Michigan Public Acts, 1923, No. 104, as amended by Michigan Public Acts, 1925, No. 13, repealed by Michigan Public Acts 1956, No. 107, provides in pertinent part:

"Section 1. That whenever the collector of internal revenue for any district in the United States, or any tax collecting officers of the United States having charge of the collection of any tax payable to the United States, shall desire to acquire a lien in favor of the United States for any tax payable to the United States against any property real or personal, within the state of Michigan pursuant to section three thousand one hundred eighty-six of the revised statutes of the United States, he is hereby authorized to file a notice of lien, setting forth the name and the residence or business address of such taxpayer, the nature and the amount of such assessment, and a description of the land on which a lien is claimed, in the office of the register of deeds in and for the county or counties in Michigan in which such property subject to such lien is situated; and such register of deeds shall, upon receiving a filing fee of fifty cents for such notice, file and index the same . . . ."

the Treasury Department made no provision for such a description, but was rather a blanket notice covering all property of the taxpayer in the county. The Department had taken the position that § 3672 permitted state law to dictate the place for filing the notice of lien, but not the form or content of the notice. Accordingly, the Department, believing that state law did not "authorize" filing of the standard federal notice with the register of deeds, filed its notice of lien on Donnelly's property in the United States District Court for the Eastern District of Michigan. The Eastern District includes the land involved in the case, which was held by Donnelly and his wife as tenants by the entireties. The question is whether the filing in federal court gave the United States priority against a subsequent good-faith purchaser of Donnelly's land.

The Department did not collect on Donnelly's tax liability nor did it foreclose its lien on any of his property. Rather, between 1950 and his death in 1963, it obtained waivers from him of the statute of limitations on the assessed liability, the last of which extended the time for collection to December 31, 1966. In the meantime, Donnelly's wife died and he became fee owner of the Livingston County land. Shortly thereafter, in August 1960, he sold the land to respondents Mr. and Mrs. Carlson, who are the real parties in interest in this case. An abstract of title, prepared for the Carlsons by the Livingston County abstract office, disclosed no tax liens affecting real property owned by Donnelly; the same abstract, however, disclaimed any examination of court records, state or federal. The United States concedes that the Carlsons had no actual notice of the lien on Donnelly's land.

After the Carlsons purchased the land, this Court decided in *United States* v. *Union Central Life Ins. Co.*, 368 U. S. 291 (1961), that the Department had been right in maintaining that it did not have to conform its

lien notices to the Michigan requirement that such notices must contain a description of the land upon which the lien is claimed. Thus, this Court held, the state law did not "authorize" state filing of federal lien notices, and the filing of a notice in the appropriate federal district court was sufficient to give the lien priority against subsequent purchasers.

In 1966, just before the last statutory waiver executed by Donnelly expired, the United States brought suit in federal court to foreclose its tax lien on the Livingston County property, now owned by the Carlsons. The District Court held that *Union Central, supra,* was distinguishable, and in any event should not be applied retroactively against a person making a good-faith purchase before its date of decision, and granted summary judgment for the Carlsons. 295 F. Supp. 557 (D. C. E. D. Mich. 1967). The Court of Appeals affirmed on the basis of the opinion of the District Court. 406 F. 2d 1065 (C. A. 6th Cir. 1969). We granted certiorari, 396 U. S. 814 (1969), to consider the apparent conflict with our decision in *Union Central, supra,* and we reverse.

The District Court distinguished *Union Central* on the ground that "an attempt had been made in [that case] to file notice with the Register of Deeds in 1954, which had been refused by the Register of Deeds pursuant to a Michigan Attorney General Opinion rendered in 1953, which ruled that federal tax lien notices not containing a description of the property are not entitled to be recorded. In the instant case, there had been no attempt to file with the Register of Deeds." 295 F. Supp., at 559.

The attempted distinction is unsatisfactory for two reasons. First, nothing in this Court's opinion in *Union Central* or in the record of that case indicates that any attempt was made to file the notice of lien with the register of deeds. Second, whether or not such an attempt was made, state law barred the local office from

accepting the federal lien notice, which lacked the description of the land explicitly required by the state statute. The presence or absence of the legally futile act of tendering the noncomplying lien notice to the register of deeds could not be a factor determinative of the priority to be granted the federal lien.[3]

Further, the District Court held that when the Carlsons purchased Donnelly's land in 1961, they were entitled to rely on the law as it appeared at that time. As the court saw it, the prevailing interpretation of the federal statute in Michigan, stated in *United States* v. *Youngblood*, 141 F. 2d 912 (C. A. 6th Cir. 1944), required the Treasury Department to file a complying notice of lien with the register of deeds in order to gain priority against subsequent purchasers. Conceding that this Court rejected the *Youngblood* interpretation in its *Union Central* decision in 1961, the District Court nevertheless concluded that *Union Central* should not be applied retroactively to give the 1950 federal lien priority over Carlsons' 1960 good-faith purchase of the same land, and thus to upset the Carlsons' allegedly justifiable expectation of unclouded title.

In its retroactivity determination, the District Court relied largely on this Court's decision in *Chicot County Drainage District* v. *Baxter State Bank*, 308 U. S. 371 (1940). The petitioner in that case had taken advantage of a federal statute which permitted readjustment of municipal debt, amounting to a reduction of that debt, upon a finding by a district court that the readjustment plan was fair and equitable and upon approval of the

[3] Nor is it significant that the lien notice here was filed in 1950, before the Michigan Attorney General's opinion referred to by the District Court (opinion of the Attorney General of Michigan, No. 1709, September 10, 1953), whereas the filing in *Union Central* came in 1954, after that opinion was rendered. The Attorney General's opinion merely declared what was already the law of Michigan.

plan by holders of two-thirds of the outstanding indebtedness. The respondents, holders of bonds issued by the petitioner, had been parties to that action, had raised no constitutional challenge to the statute, and had not appealed the final decree of the District Court approving the plan. Subsequently, in an unrelated proceeding, the statute was declared unconstitutional. *Ashton* v. *Cameron County District*, 298 U. S. 513 (1936). The respondents then brought suit on the original bonds, which had been canceled by the original decree, claiming that a decree obtained under an unconstitutional statute could not support a plea of *res judicata*. This Court held that *res judicata* barred the new action, stressing the fact that the respondents had not raised the constitutional claim in the original action. The Court noted generally that the actual existence of a statute, prior to determination of its unconstitutionality

> "is an operative fact and may have consequences which cannot justly be ignored. The past cannot always be erased by a new judicial declaration. . . . Questions of rights claimed to have become vested, of status, of prior determinations deemed to have finality and acted upon accordingly, of public policy in the light of the nature both of the statute and of its previous application, demand examination." 308 U. S., at 374.

The District Court here found that this Court's decision in *Union Central* amounted to an invalidation of the Michigan statute providing for local filing of federal tax lien notices, and that the Carlsons had justifiably relied upon the state statute, prior to its invalidation, in purchasing Donnelly's property without first searching the records of the federal court. Quoting the above language from *Chicot County* the court held that the Carlsons' reliance on the subsequently invalidated statute

was sufficient to give them priority over the earlier filed tax lien.

In our view, *Chicot County* does not support failure to apply *Union Central* here. In the first place, the *Union Central* decision did not invalidate any statute, state or federal. It merely construed § 3672, in accordance with the clear language of the statute, to authorize the filing of tax lien notices in federal court where the state law failed to provide for local filing. It determined, as the courts and other authorities who had considered the question had all agreed, that Michigan law did not authorize the filing of the standard federal lien notice, which lacked the description of the land required by the Michigan filing statute. Finally it held, in accordance with the will of Congress as expressed in the 1942 amendment to § 3672 and the accompanying legislative history, that state law imposing more onerous requirements of content on lien notices than federal law did not "authorize" state filing within the meaning of the federal statute.

Thus, the Carlsons did not rely on any statute subsequently declared unconstitutional by this Court. The most that can be said is that they may have failed to search for notices of tax lien in the federal court on the basis of a construction of § 3672 given by the Court of Appeals for the Sixth Circuit in *United States* v. *Youngblood*, *supra*. However, the *Youngblood* construction, which the Government never accepted and which it could not seek to have reviewed in this Court because the judgment in that case rested on independent grounds,[4] cannot be sufficient to deprive the Government

[4] In *Youngblood*, the United States sought an order in the nature of a writ of mandamus to compel a county register of deeds in Michigan to accept and file a standard federal lien notice, which lacked the description of the encumbered land required by the state statute. The Court of Appeals held that the order should not issue,

of the fruits of following what under the statute was the proper filing procedure.

Further, in *Chicot County* the petitioner did not merely rely on a federal statute later declared unconstitutional, but on a final judgment rendered in his favor in a proceeding in which the respondent did not even raise the constitutional issue. The analogous situation would be presented here only if the Carlsons had, before the decision in *Union Central*, obtained a decree of quiet title to their property in a proceeding to which the United States was a party and in which the United States had not raised the issue of the priority of its lien under § 3672. In short, this case lacks the element of *res judicata*—reliance by a party on a final judgment rendered in his favor—which was the decisive factor in *Chicot County*.

Acts of Congress are generally to be applied uniformly throughout the country from the date of their effectiveness onward. Generally the United States, like other parties, is entitled to adhere to what it believes to be the correct interpretation of a statute, and to reap the benefits of that adherence if it proves to be correct, except where bound to the contrary by a final judgment

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first, because United States district courts lack jurisdiction to issue original writs of mandamus or orders in the nature of mandamus; and second, because the law of Michigan clearly provided in terms that in order to be filed with the register of deeds, a federal tax lien notice had to contain a description of the land. The court went on, in apparent dictum, to confirm its earlier holding in *United States* v. *Maniaci*, 116 F. 2d 935 (1940), aff'g 36 F. Supp. 293 (D. C. W. D. Mich. 1939), that § 3672 required the United States to file in the local office lien notices conforming to the state law requirements as to content. In delivering this apparent dictum, the Court of Appeals ignored the clear legislative history, summarized in this Court's *Union Central* decision, 368 U. S., at 295–296, which showed that in enacting the 1942 amendment to § 3672, Congress had meant to disapprove the *Maniaci* holding.

in a particular case. Deviant rulings by circuit courts of appeals, particularly in apparent dictum, cannot generally provide the "justified reliance" necessary to warrant withholding retroactive application of a decision construing a statute as Congress intended it. In rare cases, decisions construing federal statutes might be denied full retroactive effect, as for instance where this Court overrules its own construction of a statute, cf. *Simpson* v. *Union Oil Co.*, 377 U. S. 13, 25 (1964), but this is not such a case.

The judgment of the Court of Appeals is reversed, and the case is remanded for further proceedings[5] not inconsistent with this opinion.

It is so ordered.

[5] The Carlsons have raised additional defenses to the foreclosure suit brought by the United States, but as these defenses were not considered by the District Court or the Court of Appeals, we do not rule on them here.

SUPREME COURT OF THE UNITED STATES

No. 104.—October Term, 1969

United States *v.* Estate of Thomas S. Donnelly, Sr., et al.	On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit.

[March 23, 1970]

Mr. Justice Harlan, concurring.

I fully agree that the Government is entitled to prevail in this case, but I would rest that conclusion on a broader ground than the Court's opinion might be taken to evince. More especially, I fear that certain distinctions suggested by the Court's opinion—*e. g.*, between clear and ambiguous statutes, decisions construing statutes for the first time, decisions overruling prior constructions of statutes—may point in the direction of a retroactivity quagmire in civil litigation not unlike that in which the Court has become ensnared in the criminal field. See my dissenting opinion in *Desist* v. *United States*, 394 U. S. 244, 256 (1969).

The impulse to make a new decisional rule nonretroactive rests, in civil cases at least, upon the same considerations that lie at the core of *stare decisis*, namely to avoid jolting the expectations of parties to a transaction. Yet once the decision to abandon precedent is made, I see no justification for applying principles determined to be wrong, be they constitutional or otherwise, to litigants who are in or may still come to court. The critical factor in determining when a new decisional rule should be applied to a transaction consummated prior to the decision's announcement is, in my view, the point at which the transaction has acquired that degree of

finality such that the rights of the parties should be considered frozen. Just as in the criminal field, the crucial moment is, for most cases, the time when a conviction has become final, see my *Desist* dissent, *supra,* so in the civil area that moment should be when the transaction is beyond challenge either because the statute of limitations has run or the rights of the parties have been fixed by litigation and have become *res judicata.* Any uncertainty engendered by this approach should, I think, be deemed part of the risks of life.

These considerations, I believe, underlie the Court's holdings in *Chicot County Drainage* v. *Baxter,* 308 U. S. 371 (1940), where the Court refused to upset a *judgment* based on a subsequent change in the law, and *Cipriano* v. *City of Houma,* 395 U. S. 701 (1969), where we held that municipal bonds, authorized by invalid referenda, would not be subject to challenge "where, under state law, the time for challenging the election result has . . . expired." 395 U. S., at 706.

To the extent that equitable considerations, for example, "reliance," are relevant, I would take this into account in the determination of what relief is appropriate in any given case. There are, of course, circumstances when a change in the law will jeopardize an edifice which was reasonably constructed on the foundation of prevailing legal doctrine. Thus, it may be, that the law of remedies would permit recission, for example, but not an award of damages to a party who finds himself able to avoid a once-valid contract under new notions of public policy. Cf. *Simpson* v. *Union Oil Co.,* 377 U. S. 13, 25 (1964). Another instance, though apt to arise infrequently in federal court, would be where certain real property transactions fail to anticipate changes in principles governing land usage, for example, the enforceability of certain kinds of easements or covenants. In such instances it may be appropriate to withhold an

equitable remedy and confine an award of damages to a limited period, or the like* The essential point is that while there is flexibility in the law of remedies, this does not affect the underlying substantive principle that short of a bar of *res judicata* or statute of limitations, courts should apply the prevailing decisional rule to the cases before them.

On these premises I join the Court's opinion.

*I would not, of course, hold this view of retroactivity binding on state courts and a federal court would, in fact, be obligated to abide by the applicable state rule should a retroactivity question arise in a diversity case.

SUPREME COURT OF THE UNITED STATES

No. 104.—OCTOBER TERM, 1969

United States *v.* Estate of Thomas S. Donnelly, Sr., et al.	On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit.

[March 23, 1970]

MR. JUSTICE DOUGLAS, with whom MR. JUSTICE BRENNAN and MR. JUSTICE STEWART concur, dissenting.

Respondents are bona fide purchasers of real property located in Livingston County, Michigan. Their purchase was made in August 1960 from one Donnelly, against whom the United States had acquired a tax lien in 1950. By § 3672 of the Internal Revenue Code of 1939 that lien is not valid against a purchaser until notice thereof is filed in the office "authorized" by state law. Where state law "authorized" no such office, notice of lien was to be filed in the office of the U. S. District Court for the judicial district in which the land is located. *Ibid.* Michigan law authorized notice of a federal tax lien containing "a description of the land" to be filed with the Register of Deeds in the county where the land was located.[1]

The United States refused to be bound by the requirement of Michigan law regarding a "description of the land" and filed notice of lien in the District Court.

Hence a title search in the accustomed way revealed no notice of lien clouding Donnelly's title. Hence respondents purchased the land innocently and in good faith. Thereafter, on March 20, 1961, the United States

[1] Act 104, Public Acts Mich. 1923, as amended Act 13 Public Acts Mich. 1925.

filed its notice of lien with the Register of Deeds of Livingston County, as required by Michigan law.[2]

On December 18, 1961, over a year after respondents' purchase, this Court held in *United States* v. *Union Central Life Ins. Co.*, 368 U. S. 291, that "Michigan law authorizing filing only if a description of the property was given" ran counter to the intent of § 3672, and consequently no real property filing requirement could be considered "authorized" by Michigan law. *Id.*, at 296. Therefore, the Court held, a notice of lien was properly filed in the District Court.

I dissent from a retroactive application of that holding so as to injure bona fide purchasers who had relied on the prior law to make their investments. The Michigan Act had at the time of the purchase been approved both by the District Court in *United States* v. *Maniaci*, 36 F. Supp. 293, and by the Court of Appeals for the Sixth Circuit in *Youngblood* v. *United States*, 141 F. 2d 912.

It seems manifestly unjust to deprive respondents of their property for the benefit of a lawless tax collector who knowingly concealed his secret lien until after the purchase was made.[3]

It is true that later, in *Union Central*, we ruled that § 3672 did not require the Government to file pursuant to Michigan law. Yet this new ruling on federal pre-

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[2] Previously, on November 28, 1950, the United States had filed notice of its lien with the Register of Deeds of Wayne County.

[3] The Michigan statute requiring notices of liens to contain a description of real property upon which a lien was claimed was repealed in April 1956 by Act 107, Public Acts of Michigan of 1956. The United States, however, did not thereafter promptly file its notice of lien in the state office as it was now authorized to do under Michigan law. Nor did it stand on its previous filing in the District Court. Instead, it waited until December 18, 1961, on which date it filed a notice of the lien with the Register of Deeds of Livingston County.

emption should not, in my view, be applied to undo everything done by those relying on the former construction, as upheld in *Youngblood*.

I would hold that the teaching of *Chicot County Dist.* v. *Bank*, 308 U. S. 371, 374, as to statutes ruled unconstitutional, should be applied to the present situation:

> "The actual existence of a statute, prior to such a determination, is an operative fact and may have consequences which cannot justly be ignored. The past cannot always be erased by a new judicial declaration. The effect of the subsequent ruling as to invalidity may have to be considered in various aspects, with respect to particular relations, individual and corporate, and particular conduct, private and official. Questions of rights claimed to have become vested, of status, of prior determinations deemed to have finality and acted upon accordingly, of public policy in the light of the nature both of the statute and of its previous application, demand examination."

The majority of the Court in the present case narrowly confines that statement to the particular facts involved in *Chicot County*. The principle there involved, however, rooted deeply in considerations of fairness, clearly applies to the present case. I would hold bona fide purchasers, who antedate our *Union Central* decision and who relied on the law as it had been previously construed, are protected in their investments. I dissent from the Court's holding to the contrary.